

In the House of Representatives, U. S.,

May 28, 2010.

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 4213) entitled “An Act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.”, with the following

HOUSE AMENDMENT TO SENATE AMENDMENT:

In lieu of the matter proposed to be inserted by the amendment of the Senate, insert the following:

1 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**

2 **TABLE OF CONTENTS.**

3 (a) *SHORT TITLE.*—*This Act may be cited as the*
4 *“American Jobs and Closing Tax Loopholes Act of 2010”.*

5 (b) *AMENDMENT OF 1986 CODE.*—*Except as otherwise*
6 *expressly provided, whenever in titles I, II, and IV of this*
7 *Act an amendment or repeal is expressed in terms of an*
8 *amendment to, or repeal of, a section or other provision,*
9 *the reference shall be considered to be made to a section or*
10 *other provision of the Internal Revenue Code of 1986.*

11 (c) *TABLE OF CONTENTS.*—*The table of contents for*
12 *this Act is as follows:*

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—INFRASTRUCTURE INCENTIVES

Sec. 101. Extension of Build America Bonds.

Sec. 102. Exempt-facility bonds for sewage and water supply facilities.



- Sec. 103. Extension of exemption from alternative minimum tax treatment for certain tax-exempt bonds.*
- Sec. 104. Extension and additional allocations of recovery zone bond authority.*
- Sec. 105. Allowance of new markets tax credit against alternative minimum tax.*
- Sec. 106. Extension of tax-exempt eligibility for loans guaranteed by Federal home loan banks.*
- Sec. 107. Extension of temporary small issuer rules for allocation of tax-exempt interest expense by financial institutions.*

TITLE II—EXTENSION OF EXPIRING PROVISIONS

Subtitle A—Energy

- Sec. 201. Alternative motor vehicle credit for new qualified hybrid motor vehicles other than passenger automobiles and light trucks.*
- Sec. 202. Incentives for biodiesel and renewable diesel.*
- Sec. 203. Credit for electricity produced at certain open-loop biomass facilities.*
- Sec. 204. Extension and modification of credit for steel industry fuel.*
- Sec. 205. Credit for producing fuel from coke or coke gas.*
- Sec. 206. New energy efficient home credit.*
- Sec. 207. Excise tax credits and outlay payments for alternative fuel and alternative fuel mixtures.*
- Sec. 208. Special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities.*
- Sec. 209. Suspension of limitation on percentage depletion for oil and gas from marginal wells.*
- Sec. 210. Direct payment of energy efficient appliances tax credit.*
- Sec. 211. Modification of standards for windows, doors, and skylights with respect to the credit for nonbusiness energy property.*

Subtitle B—Individual Tax Relief

PART I—MISCELLANEOUS PROVISIONS

- Sec. 221. Deduction for certain expenses of elementary and secondary school teachers.*
- Sec. 222. Additional standard deduction for State and local real property taxes.*
- Sec. 223. Deduction of State and local sales taxes.*
- Sec. 224. Contributions of capital gain real property made for conservation purposes.*
- Sec. 225. Above-the-line deduction for qualified tuition and related expenses.*
- Sec. 226. Tax-free distributions from individual retirement plans for charitable purposes.*
- Sec. 227. Look-thru of certain regulated investment company stock in determining gross estate of nonresidents.*

PART II—LOW-INCOME HOUSING CREDITS

- Sec. 231. Election for direct payment of low-income housing credit for 2010.*

Subtitle C—Business Tax Relief

- Sec. 241. Research credit.*
- Sec. 242. Indian employment tax credit.*
- Sec. 243. New markets tax credit.*
- Sec. 244. Railroad track maintenance credit.*
- Sec. 245. Mine rescue team training credit.*

- Sec. 246. Employer wage credit for employees who are active duty members of the uniformed services.*
- Sec. 247. 5-year depreciation for farming business machinery and equipment.*
- Sec. 248. 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements.*
- Sec. 249. 7-year recovery period for motorsports entertainment complexes.*
- Sec. 250. Accelerated depreciation for business property on an Indian reservation.*
- Sec. 251. Enhanced charitable deduction for contributions of food inventory.*
- Sec. 252. Enhanced charitable deduction for contributions of book inventories to public schools.*
- Sec. 253. Enhanced charitable deduction for corporate contributions of computer inventory for educational purposes.*
- Sec. 254. Election to expense mine safety equipment.*
- Sec. 255. Special expensing rules for certain film and television productions.*
- Sec. 256. Expensing of environmental remediation costs.*
- Sec. 257. Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.*
- Sec. 258. Modification of tax treatment of certain payments to controlling exempt organizations.*
- Sec. 259. Exclusion of gain or loss on sale or exchange of certain brownfield sites from unrelated business income.*
- Sec. 260. Timber REIT modernization.*
- Sec. 261. Treatment of certain dividends of regulated investment companies.*
- Sec. 262. RIC qualified investment entity treatment under FIRPTA.*
- Sec. 263. Exceptions for active financing income.*
- Sec. 264. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules.*
- Sec. 265. Basis adjustment to stock of S corps making charitable contributions of property.*
- Sec. 266. Empowerment zone tax incentives.*
- Sec. 267. Tax incentives for investment in the District of Columbia.*
- Sec. 268. Renewal community tax incentives.*
- Sec. 269. Temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the Virgin Islands.*
- Sec. 270. Payment to American Samoa in lieu of extension of economic development credit.*
- Sec. 271. Election to temporarily utilize unused AMT credits determined by domestic investment.*
- Sec. 272. Study of extended tax expenditures.*

Subtitle D—Temporary Disaster Relief Provisions

PART I—NATIONAL DISASTER RELIEF

- Sec. 281. Waiver of certain mortgage revenue bond requirements.*
- Sec. 282. Losses attributable to federally declared disasters.*
- Sec. 283. Special depreciation allowance for qualified disaster property.*
- Sec. 284. Net operating losses attributable to federally declared disasters.*
- Sec. 285. Expensing of qualified disaster expenses.*

PART II—REGIONAL PROVISIONS

SUBPART A—NEW YORK LIBERTY ZONE

- Sec. 291. Special depreciation allowance for nonresidential and residential real property.*
- Sec. 292. Tax-exempt bond financing.*

SUBPART B—GO ZONE

- Sec. 295. Increase in rehabilitation credit.*
- Sec. 296. Work opportunity tax credit with respect to certain individuals affected by Hurricane Katrina for employers inside disaster areas.*
- Sec. 297. Extension of low-income housing credit rules for buildings in GO zones.*

TITLE III—PENSION PROVISIONS

Subtitle A—Pension Funding Relief

PART 1—SINGLE-EMPLOYER PLANS

- Sec. 301. Extended period for single-employer defined benefit plans to amortize certain shortfall amortization bases.*
- Sec. 302. Application of extended amortization period to plans subject to prior law funding rules.*
- Sec. 303. Suspension of certain funding level limitations.*
- Sec. 304. Lookback for credit balance rule.*
- Sec. 305. Information reporting.*
- Sec. 306. Rollover of amounts received in airline carrier bankruptcy.*

PART 2—MULTIEMPLOYER PLANS

- Sec. 311. Optional use of 30-year amortization periods.*
- Sec. 312. Optional longer recovery periods for multiemployer plans in endangered or critical status.*
- Sec. 313. Modification of certain amortization extensions under prior law.*
- Sec. 314. Alternative default schedule for plans in endangered or critical status.*
- Sec. 315. Transition rule for certifications of plan status.*

Subtitle B—Fee Disclosure

- Sec. 321. Short title of subtitle.*
- Sec. 322. Amendments to the Employee Retirement Income Security Act of 1974.*
- Sec. 323. Amendments to the Internal Revenue Code of 1986.*
- Sec. 324. Regulatory authority and coordination.*
- Sec. 325. Effective date of subtitle.*

TITLE IV—REVENUE OFFSETS

Subtitle A—Foreign Provisions

- Sec. 401. Rules to prevent splitting foreign tax credits from the income to which they relate.*
- Sec. 402. Denial of foreign tax credit with respect to foreign income not subject to United States taxation by reason of covered asset acquisitions.*
- Sec. 403. Separate application of foreign tax credit limitation, etc., to items resourced under treaties.*

- Sec. 404. Limitation on the amount of foreign taxes deemed paid with respect to section 956 inclusions.*
- Sec. 405. Special rule with respect to certain redemptions by foreign subsidiaries.*
- Sec. 406. Modification of affiliation rules for purposes of rules allocating interest expense.*
- Sec. 407. Termination of special rules for interest and dividends received from persons meeting the 80-percent foreign business requirements.*
- Sec. 408. Source rules for income on guarantees.*
- Sec. 409. Limitation on extension of statute of limitations for failure to notify Secretary of certain foreign transfers.*

Subtitle B—Personal Service Income Earned in Pass-thru Entities

- Sec. 411. Partnership interests transferred in connection with performance of services.*
- Sec. 412. Income of partners for performing investment management services treated as ordinary income received for performance of services.*
- Sec. 413. Employment tax treatment of professional service businesses.*

Subtitle C—Corporate Provisions

- Sec. 421. Treatment of securities of a controlled corporation exchanged for assets in certain reorganizations.*
- Sec. 422. Taxation of boot received in reorganizations.*

Subtitle D—Other Provisions

- Sec. 431. Modifications with respect to Oil Spill Liability Trust Fund.*
- Sec. 432. Time for payment of corporate estimated taxes.*

TITLE V—UNEMPLOYMENT, HEALTH, AND OTHER ASSISTANCE

Subtitle A—Unemployment Insurance and Other Assistance

- Sec. 501. Extension of unemployment insurance provisions.*
- Sec. 502. Coordination of emergency unemployment compensation with regular compensation.*
- Sec. 503. Extension of the Emergency Contingency Fund.*

Subtitle B—Health Provisions

- Sec. 511. Extension of section 508 reclassifications.*
- Sec. 512. Repeal of delay of RUG-IV.*
- Sec. 513. Limitation on reasonable costs payments for certain clinical diagnostic laboratory tests furnished to hospital patients in certain rural areas.*
- Sec. 514. Funding for claims reprocessing.*
- Sec. 515. Medicaid and CHIP technical corrections.*
- Sec. 516. Addition of inpatient drug discount program to 340B drug discount program.*
- Sec. 517. Continued inclusion of orphan drugs in definition of covered outpatient drugs with respect to children's hospitals under the 340B drug discount program.*
- Sec. 518. Conforming amendment related to waiver of coinsurance for preventive services.*
- Sec. 519. Establish a CMS-IRS data match to identify fraudulent providers.*
- Sec. 520. Clarification of effective date of part B special enrollment period for disabled TRICARE beneficiaries.*

- Sec. 521. *Physician payment update.*
 Sec. 522. *Adjustment to Medicare payment localities.*
 Sec. 523. *Clarification of 3-day payment window.*

TITLE VI—OTHER PROVISIONS

- Sec. 601. *Extension of national flood insurance program.*
 Sec. 602. *Allocation of geothermal receipts.*
 Sec. 603. *Small business loan guarantee enhancement extensions.*
 Sec. 604. *Emergency agricultural disaster assistance.*
 Sec. 605. *Summer employment for youth.*
 Sec. 606. *Housing Trust Fund.*
 Sec. 607. *The Individual Indian Money Account Litigation Settlement Act of 2010.*
 Sec. 608. *Appropriation of funds for final settlement of claims from In re Black Farmers Discrimination Litigation.*
 Sec. 609. *Expansion of eligibility for concurrent receipt of military retired pay and veterans' disability compensation to include all chapter 61 disability retirees regardless of disability rating percentage or years of service.*
 Sec. 610. *Extension of use of 2009 poverty guidelines.*
 Sec. 611. *Refunds disregarded in the administration of Federal programs and federally assisted programs.*
 Sec. 612. *State court improvement program.*
 Sec. 613. *Qualifying timber contract options.*
 Sec. 614. *Extension and flexibility for certain allocated surface transportation programs.*
 Sec. 615. *Community College and Career Training Grant Program.*
 Sec. 616. *Extensions of duty suspensions on cotton shirting fabrics and related provisions.*
 Sec. 617. *Modification of Wool Apparel Manufacturers Trust Fund.*
 Sec. 618. *Department of Commerce Study.*
 Sec. 619. *ARRA planning and reporting.*

TITLE VII—BUDGETARY PROVISIONS

- Sec. 701. *Budgetary provisions.*

1 **TITLE I—INFRASTRUCTURE**

2 **INCENTIVES**

3 **SEC. 101. EXTENSION OF BUILD AMERICA BONDS.**

4 (a) *IN GENERAL.*—Subparagraph (B) of section
 5 54AA(d)(1) is amended by striking “January 1, 2011” and
 6 inserting “January 1, 2013”.

7 (b) *EXTENSION OF PAYMENTS TO ISSUERS.*—

8 (1) *IN GENERAL.*—Section 6431 is amended—

1 (A) by striking “January 1, 2011” in sub-
2 section (a) and inserting “January 1, 2013”;
3 and

4 (B) by striking “January 1, 2011” in sub-
5 section (f)(1)(B) and inserting “a particular
6 date”.

7 (2) *CONFORMING AMENDMENTS.*—Subsection (g)
8 of section 54AA is amended—

9 (A) by striking “January 1, 2011” and in-
10 serting “January 1, 2013”; and

11 (B) by striking “QUALIFIED BONDS ISSUED
12 BEFORE 2011” in the heading and inserting
13 “CERTAIN QUALIFIED BONDS”.

14 (c) *REDUCTION IN PERCENTAGE OF PAYMENTS TO*
15 *ISSUERS.*—Subsection (b) of section 6431 is amended—

16 (1) by striking “The Secretary” and inserting
17 the following:

18 “(1) *IN GENERAL.*—The Secretary”;

19 (2) by striking “35 percent” and inserting “the
20 applicable percentage”; and

21 (3) by adding at the end the following new para-
22 graph:

23 “(2) *APPLICABLE PERCENTAGE.*—For purposes
24 of this subsection, the term ‘applicable percentage’

1 *means the percentage determined in accordance with*
 2 *the following table:*

<i>“In the case of a qualified bond issued during cal- endar year:</i>	<i>The applicable percentage is:</i>
<i>2009 or 2010</i>	<i>35 percent</i>
<i>2011</i>	<i>32 percent</i>
<i>2012</i>	<i>30 percent.”.</i>

3 *(d) CURRENT REFUNDINGS PERMITTED.—Subsection*
 4 *(g) of section 54AA is amended by adding at the end the*
 5 *following new paragraph:*

6 *“(3) TREATMENT OF CURRENT REFUNDING*
 7 *BONDS.—*

8 *“(A) IN GENERAL.—For purposes of this*
 9 *subsection, the term ‘qualified bond’ includes any*
 10 *bond (or series of bonds) issued to refund a*
 11 *qualified bond if—*

12 *“(i) the average maturity date of the*
 13 *issue of which the refunding bond is a part*
 14 *is not later than the average maturity date*
 15 *of the bonds to be refunded by such issue,*

16 *“(ii) the amount of the refunding bond*
 17 *does not exceed the outstanding amount of*
 18 *the refunded bond, and*

19 *“(iii) the refunded bond is redeemed*
 20 *not later than 90 days after the date of the*
 21 *issuance of the refunding bond.*

1 (b) *TAX-EXEMPT ISSUANCE BY INDIAN TRIBAL GOV-*
2 *ERNMENTS.*—

3 (1) *IN GENERAL.*—*Subsection (c) of section 7871*
4 *is amended by adding at the end the following new*
5 *paragraph:*

6 “(4) *EXCEPTION FOR BONDS FOR WATER AND*
7 *SEWAGE FACILITIES.*—*Paragraph (2) shall not apply*
8 *to an exempt facility bond 95 percent or more of the*
9 *net proceeds (as defined in section 150(a)(3)) of which*
10 *are to be used to provide facilities described in para-*
11 *graph (4) or (5) of section 142(a).”.*

12 (2) *CONFORMING AMENDMENT.*—*Paragraph (2)*
13 *of section 7871(c) is amended by striking “paragraph*
14 *(3)” and inserting “paragraphs (3) and (4)”.*

15 (c) *EFFECTIVE DATE.*—*The amendments made by this*
16 *section shall apply to obligations issued after the date of*
17 *the enactment of this Act.*

18 **SEC. 103. EXTENSION OF EXEMPTION FROM ALTERNATIVE**
19 **MINIMUM TAX TREATMENT FOR CERTAIN**
20 **TAX-EXEMPT BONDS.**

21 (a) *IN GENERAL.*—*Clause (vi) of section 57(a)(5)(C)*
22 *is amended—*

23 (1) *by striking “January 1, 2011” in subclause*
24 *(I) and inserting “January 1, 2012”; and*

1 (2) *by striking “AND 2010” in the heading and*
2 *inserting “, 2010, AND 2011”.*

3 (b) *ADJUSTED CURRENT EARNINGS.*—*Clause (iv) of*
4 *section 56(g)(4)(B) is amended—*

5 (1) *by striking “January 1, 2011” in subclause*
6 *(I) and inserting “January 1, 2012”; and*

7 (2) *by striking “AND 2010” in the heading and*
8 *inserting “, 2010, AND 2011”.*

9 (c) *EFFECTIVE DATE.*—*The amendments made by this*
10 *section shall apply to obligations issued after December 31,*
11 *2010.*

12 **SEC. 104. EXTENSION AND ADDITIONAL ALLOCATIONS OF**
13 **RECOVERY ZONE BOND AUTHORITY.**

14 (a) *EXTENSION OF RECOVERY ZONE BOND AUTHOR-*
15 *ITY.*—*Section 1400U–2(b)(1) and section 1400U–*
16 *3(b)(1)(B) are each amended by striking “January 1,*
17 *2011” and inserting “January 1, 2012”.*

18 (b) *ADDITIONAL ALLOCATIONS OF RECOVERY ZONE*
19 *BOND AUTHORITY BASED ON UNEMPLOYMENT.*—*Section*
20 *1400U–1 is amended by adding at the end the following*
21 *new subsection:*

22 “*(c) ALLOCATION OF 2010 RECOVERY ZONE BOND*
23 *LIMITATIONS BASED ON UNEMPLOYMENT.*—

24 “*(1) IN GENERAL.*—*The Secretary shall allocate*
25 *the 2010 national recovery zone economic development*

1 *bond limitation and the 2010 national recovery zone*
2 *facility bond limitation among the States in the pro-*
3 *portion that each such State's 2009 unemployment*
4 *number bears to the aggregate of the 2009 unemploy-*
5 *ment numbers for all of the States.*

6 “(2) *MINIMUM ALLOCATION.*—*The Secretary*
7 *shall adjust the allocations under paragraph (1) for*
8 *each State to the extent necessary to ensure that no*
9 *State (prior to any reduction under paragraph (3))*
10 *receives less than 0.9 percent of the 2010 national re-*
11 *covery zone economic development bond limitation*
12 *and 0.9 percent of the 2010 national recovery zone fa-*
13 *cility bond limitation.*

14 “(3) *ALLOCATIONS BY STATES.*—

15 “(A) *IN GENERAL.*—*Each State with respect*
16 *to which an allocation is made under paragraph*
17 *(1) shall reallocate such allocation among the*
18 *counties and large municipalities (as defined in*
19 *subsection (a)(3)(B)) in such State in the pro-*
20 *portion that each such county's or municipality's*
21 *2009 unemployment number bears to the aggre-*
22 *gate of the 2009 unemployment numbers for all*
23 *the counties and large municipalities (as so de-*
24 *finned) in such State.*

1 “(B) 2010 ALLOCATION REDUCED BY
2 AMOUNT OF PREVIOUS ALLOCATION.—Each State
3 shall reduce (but not below zero)—

4 “(i) the amount of the 2010 national
5 recovery zone economic development bond
6 limitation allocated to each county or large
7 municipality (as so defined) in such State
8 by the amount of the national recovery zone
9 economic development bond limitation allo-
10 cated to such county or large municipality
11 under subsection (a)(3)(A) (determined
12 without regard to any waiver thereof), and

13 “(ii) the amount of the 2010 national
14 recovery zone facility bond limitation allo-
15 cated to each county or large municipality
16 (as so defined) in such State by the amount
17 of the national recovery zone facility bond
18 limitation allocated to such county or large
19 municipality under subsection (a)(3)(A)
20 (determined without regard to any waiver
21 thereof).

22 “(C) WAIVER OF SUBALLOCATIONS.—A
23 county or municipality may waive any portion
24 of an allocation made under this paragraph. A
25 county or municipality shall be treated as hav-

1 *ing waived any portion of an allocation made*
2 *under this paragraph which has not been allo-*
3 *cated to a bond issued before May 1, 2011. Any*
4 *allocation waived (or treated as waived) under*
5 *this subparagraph may be used or reallocated by*
6 *the State.*

7 *“(D) SPECIAL RULE FOR A MUNICIPALITY*
8 *IN A COUNTY.—In the case of any large munici-*
9 *pality any portion of which is in a county, such*
10 *portion shall be treated as part of such munici-*
11 *pality and not part of such county.*

12 *“(4) 2009 UNEMPLOYMENT NUMBER.—For pur-*
13 *poses of this subsection, the term ‘2009 unemployment*
14 *number’ means, with respect to any State, county or*
15 *municipality, the number of individuals in such*
16 *State, county, or municipality who were determined*
17 *to be unemployed by the Bureau of Labor Statistics*
18 *for December 2009.*

19 *“(5) 2010 NATIONAL LIMITATIONS.—*

20 *“(A) RECOVERY ZONE ECONOMIC DEVELOP-*
21 *MENT BONDS.—The 2010 national recovery zone*
22 *economic development bond limitation is*
23 *\$10,000,000,000. Any allocation of such limita-*
24 *tion under this subsection shall be treated for*
25 *purposes of section 1400U–2 in the same manner*

1 “(v) the credit determined under sec-
2 tion 45D, but only with respect to credits
3 determined with respect to qualified equity
4 investments (as defined in section 45D(b))
5 initially made before January 1, 2012.”.

6 (b) *EFFECTIVE DATE.*—The amendments made by this
7 section shall apply to credits determined with respect to
8 qualified equity investments (as defined in section 45D(b)
9 of the Internal Revenue Code of 1986) initially made after
10 March 15, 2010.

11 **SEC. 106. EXTENSION OF TAX-EXEMPT ELIGIBILITY FOR**
12 **LOANS GUARANTEED BY FEDERAL HOME**
13 **LOAN BANKS.**

14 Clause (iv) of section 149(b)(3)(A) is amended by
15 striking “December 31, 2010” and inserting “December 31,
16 2011”.

17 **SEC. 107. EXTENSION OF TEMPORARY SMALL ISSUER**
18 **RULES FOR ALLOCATION OF TAX-EXEMPT IN-**
19 **TEREST EXPENSE BY FINANCIAL INSTITU-**
20 **TIONS.**

21 (a) *IN GENERAL.*—Clauses (i), (ii), and (iii) of section
22 265(b)(3)(G) are each amended by striking “or 2010” and
23 inserting “, 2010, or 2011”.

1 (b) *CONFORMING AMENDMENT.*—Subparagraph (G) of
 2 section 265(b)(3) is amended by striking “AND 2010” in the
 3 heading and inserting “, 2010, AND 2011”.

4 (c) *EFFECTIVE DATE.*—The amendments made by this
 5 section shall apply to obligations issued after December 31,
 6 2010.

7 **TITLE II—EXTENSION OF**
 8 **EXPIRING PROVISIONS**
 9 **Subtitle A—Energy**

10 **SEC. 201. ALTERNATIVE MOTOR VEHICLE CREDIT FOR NEW**
 11 **QUALIFIED HYBRID MOTOR VEHICLES OTHER**
 12 **THAN PASSENGER AUTOMOBILES AND LIGHT**
 13 **TRUCKS.**

14 (a) *IN GENERAL.*—Paragraph (3) of section 30B(k) is
 15 amended by striking “December 31, 2009” and inserting
 16 “December 31, 2010”.

17 (b) *EFFECTIVE DATE.*—The amendment made by this
 18 section shall apply to property purchased after December
 19 31, 2009.

20 **SEC. 202. INCENTIVES FOR BIODIESEL AND RENEWABLE**
 21 **DIESEL.**

22 (a) *CREDITS FOR BIODIESEL AND RENEWABLE DIE-*
 23 *SEL USED AS FUEL.*—Subsection (g) of section 40A is
 24 amended by striking “December 31, 2009” and inserting
 25 “December 31, 2010”.

1 (b) *EXCISE TAX CREDITS AND OUTLAY PAYMENTS FOR*
2 *BIODIESEL AND RENEWABLE DIESEL FUEL MIXTURES.*—

3 (1) *Paragraph (6) of section 6426(c) is amended*
4 *by striking “December 31, 2009” and inserting “De-*
5 *cember 31, 2010”.*

6 (2) *Subparagraph (B) of section 6427(e)(6) is*
7 *amended by striking “December 31, 2009” and insert-*
8 *ing “December 31, 2010”.*

9 (c) *EFFECTIVE DATE.*—*The amendments made by this*
10 *section shall apply to fuel sold or used after December 31,*
11 *2009.*

12 **SEC. 203. CREDIT FOR ELECTRICITY PRODUCED AT CER-**
13 **TAIN OPEN-LOOP BIOMASS FACILITIES.**

14 (a) *IN GENERAL.*—*Clause (ii) of section 45(b)(4)(B)*
15 *is amended—*

16 (1) *by striking “5-year period” and inserting*
17 *“6-year period”; and*

18 (2) *by adding at the end the following: “In the*
19 *case of the last year of the 6-year period described in*
20 *the preceding sentence, the credit determined under*
21 *subsection (a) with respect to electricity produced*
22 *during such year shall not exceed 80 percent of such*
23 *credit determined without regard to this sentence.”.*

1 (b) *EFFECTIVE DATE.*—*The amendment made by this*
2 *section shall apply to electricity produced and sold after*
3 *December 31, 2009.*

4 **SEC. 204. EXTENSION AND MODIFICATION OF CREDIT FOR**
5 **STEEL INDUSTRY FUEL.**

6 (a) *CREDIT PERIOD.*—

7 (1) *IN GENERAL.*—*Subclause (II) of section*
8 *45(e)(8)(D)(ii) is amended to read as follows:*

9 *“(II) CREDIT PERIOD.—In lieu of*
10 *the 10-year period referred to in*
11 *clauses (i) and (ii)(II) of subpara-*
12 *graph (A), the credit period shall be*
13 *the period beginning on the date that*
14 *the facility first produces steel industry*
15 *fuel that is sold to an unrelated person*
16 *after September 30, 2008, and ending*
17 *2 years after such date.”.*

18 (2) *CONFORMING AMENDMENT.*—*Section*
19 *45(e)(8)(D) is amended by striking clause (iii) and*
20 *by redesignating clause (iv) as clause (iii).*

21 (b) *EXTENSION OF PLACED-IN-SERVICE DATE.*—*Sub-*
22 *paragraph (A) of section 45(d)(8) is amended—*

23 (1) *by striking “(or any modification to a facil-*
24 *ity)”;* and

25 (2) *by striking “2010” and inserting “2011”.*

1 (c) *CLARIFICATIONS.*—

2 (1) *STEEL INDUSTRY FUEL.*—Subclause (I) of
3 section 45(c)(7)(C)(i) is amended by inserting “, a
4 blend of coal and petroleum coke, or other coke feed-
5 stock” after “on coal”.

6 (2) *OWNERSHIP INTEREST.*—Section 45(d)(8) is
7 amended by adding at the end the following new flush
8 sentence:

9 “With respect to a facility producing steel industry
10 fuel, no person (including a ground lessor, customer,
11 supplier, or technology licensor) shall be treated as
12 having an ownership interest in the facility or as oth-
13 erwise entitled to the credit allowable under sub-
14 section (a) with respect to such facility if such per-
15 son’s rent, license fee, or other entitlement to net pay-
16 ments from the owner of such facility is measured by
17 a fixed dollar amount or a fixed amount per ton, or
18 otherwise determined without regard to the profit or
19 loss of such facility.”

20 (3) *PRODUCTION AND SALE.*—Subparagraph (D)
21 of section 45(e)(8), as amended by subsection (a)(2),
22 is amended by redesignating clause (iii) as clause (iv)
23 and by inserting after clause (ii) the following new
24 clause:

1 “(iii) *PRODUCTION AND SALE.*—The
2 owner of a facility producing steel industry
3 fuel shall be treated as producing and sell-
4 ing steel industry fuel where that owner
5 manufactures such steel industry fuel from
6 coal, a blend of coal and petroleum coke, or
7 other coke feedstock to which it has title.
8 The sale of such steel industry fuel by the
9 owner of the facility to a person who is not
10 the owner of the facility shall not fail to
11 qualify as a sale to an unrelated person
12 solely because such purchaser may also be a
13 ground lessor, supplier, or customer.”.

14 (d) *SPECIFIED CREDIT FOR PURPOSES OF ALTER-*
15 *NATIVE MINIMUM TAX EXCLUSION.*—Subclause (II) of sec-
16 *tion 38(c)(4)(B)(iii) is amended by inserting “(in the case*
17 *of a refined coal production facility producing steel indus-*
18 *try fuel, during the credit period set forth in section*
19 *45(e)(8)(D)(ii)(II))” after “service”.*

20 (e) *EFFECTIVE DATES.*—

21 (1) *IN GENERAL.*—The amendments made by
22 subsections (a), (b), and (d) shall take effect on the
23 date of the enactment of this Act.

24 (2) *CLARIFICATIONS.*—The amendments made by
25 subsection (c) shall take effect as if included in the

1 “(B) December 31, 2010, in the case of fuels
2 described in subparagraph (A), (C), (F), or (G)
3 of paragraph (2), and

4 “(C) December 31, 2009, in any other
5 case.”.

6 (b) *ALTERNATIVE FUEL MIXTURE CREDIT.*—Para-
7 graph (3) of section 6426(e) is amended by striking “after
8 December 31, 2009” and all that follows and inserting
9 “after—

10 “(A) September 30, 2014, in the case of liq-
11 uefied hydrogen,

12 “(B) December 31, 2010, in the case of fuels
13 described in subparagraph (A), (C), (F), or (G)
14 of subsection (d)(2), and

15 “(C) December 31, 2009, in any other
16 case.”.

17 (c) *PAYMENT AUTHORITY.*—

18 (1) *IN GENERAL.*—Paragraph (6) of section
19 6427(e) is amended by striking “and” at the end of
20 subparagraph (C), by striking the period at the end
21 of subparagraph (D) and inserting “, and”, and by
22 adding at the end the following new subparagraph:

23 “(E) any alternative fuel or alternative fuel
24 mixture (as so defined) involving fuel described
25 in subparagraph (A), (C), (F), or (G) of section

1 6426(d)(2) sold or used after December 31,
2 2010.”.

3 (2) *CONFORMING AMENDMENT.*—Subparagraph
4 (C) of section 6427(e)(6) is amended by inserting “or
5 (E)” after “subparagraph (D)”.

6 (d) *EXCLUSION OF BLACK LIQUOR FROM CREDIT ELI-*
7 *GIBILITY.*—The last sentence of section 6426(d)(2) is
8 amended by striking “or biodiesel” and inserting “biodiesel,
9 or any fuel (including lignin, wood residues, or spent
10 pulping liquors) derived from the production of paper or
11 pulp”.

12 (e) *EFFECTIVE DATE.*—The amendments made by this
13 section shall apply to fuel sold or used after December 31,
14 2009.

15 **SEC. 208. SPECIAL RULE FOR SALES OR DISPOSITIONS TO**
16 **IMPLEMENT FERC OR STATE ELECTRIC RE-**
17 **STRUCTURING POLICY FOR QUALIFIED ELEC-**
18 **TRIC UTILITIES.**

19 (a) *IN GENERAL.*—Paragraph (3) of section 451(i) is
20 amended by striking “January 1, 2010” and inserting
21 “January 1, 2011”.

22 (b) *MODIFICATION OF DEFINITION OF INDEPENDENT*
23 *TRANSMISSION COMPANY.*—

24 (1) *IN GENERAL.*—Clause (i) of section
25 451(i)(4)(B) is amended to read as follows:

1 “(i) who the Federal Energy Regu-
2 latory Commission determines in its au-
3 thorization of the transaction under section
4 203 of the Federal Power Act (16 U.S.C.
5 824b) or by declaratory order—

6 “(I) is not itself a market partici-
7 pant as determined by the Commis-
8 sion, and also is not controlled by any
9 such market participant, or

10 “(II) to be independent from mar-
11 ket participants or to be an inde-
12 pendent transmission company within
13 the meaning of such Commission’s
14 rules applicable to independent trans-
15 mission providers, and”.

16 (2) *RELATED PERSONS.*—Paragraph (4) of sec-
17 tion 451(i) is amended by adding at the end the fol-
18 lowing flush sentence:

19 “*For purposes of subparagraph (B)(i)(I), a person*
20 *shall be treated as controlled by another person if*
21 *such persons would be treated as a single employer*
22 *under section 52.*”.

23 (c) *EFFECTIVE DATE.*—

1 (1) *IN GENERAL.*—*The amendment made by sub-*
2 *section (a) shall apply to dispositions after December*
3 *31, 2009.*

4 (2) *MODIFICATIONS.*—*The amendments made by*
5 *subsection (b) shall apply to dispositions after the*
6 *date of the enactment of this Act.*

7 **SEC. 209. SUSPENSION OF LIMITATION ON PERCENTAGE**
8 **DEPLETION FOR OIL AND GAS FROM MAR-**
9 **GINAL WELLS.**

10 (a) *IN GENERAL.*—*Clause (ii) of section*
11 *613A(c)(6)(H) is amended by striking “January 1, 2010”*
12 *and inserting “January 1, 2011”.*

13 (b) *EFFECTIVE DATE.*—*The amendment made by this*
14 *section shall apply to taxable years beginning after Decem-*
15 *ber 31, 2009.*

16 **SEC. 210. DIRECT PAYMENT OF ENERGY EFFICIENT APPLI-**
17 **ANCES TAX CREDIT.**

18 *In the case of any taxable year which includes the last*
19 *day of calendar year 2009 or calendar year 2010, a tax-*
20 *payer who elects to waive the credit which would otherwise*
21 *be determined with respect to the taxpayer under section*
22 *45M of the Internal Revenue Code of 1986 for such taxable*
23 *year shall be treated as making a payment against the tax*
24 *imposed under subtitle A of such Code for such taxable year*
25 *in an amount equal to 85 percent of the amount of the cred-*

1 *it which would otherwise be so determined. Such payment*
2 *shall be treated as made on the later of the due date of the*
3 *return of such tax or the date on which such return is filed.*
4 *Elections under this section may be made separately for*
5 *2009 and 2010, but once made shall be irrevocable. No*
6 *amount shall be includible in gross income or alternative*
7 *minimum taxable income by reason of this section.*

8 **SEC. 211. MODIFICATION OF STANDARDS FOR WINDOWS,**
9 **DOORS, AND SKYLIGHTS WITH RESPECT TO**
10 **THE CREDIT FOR NONBUSINESS ENERGY**
11 **PROPERTY.**

12 (a) *IN GENERAL.*—*Paragraph (4) of section 25C(c) is*
13 *amended by striking “unless” and all that follows and in-*
14 *serting “unless—*

15 *“(A) in the case of any component placed in*
16 *service after the date which is 90 days after the*
17 *date of the enactment of the American Jobs and*
18 *Closing Tax Loopholes Act of 2010, such compo-*
19 *nent meets the criteria for such components es-*
20 *tablished by the 2010 Energy Star Program Re-*
21 *quirements for Residential Windows, Doors, and*
22 *Skylights, Version 5.0 (or any subsequent version*
23 *of such requirements which is in effect after Jan-*
24 *uary 4, 2010),*

1 “(B) in the case of any component placed
 2 in service after the date of the enactment of the
 3 *American Jobs and Closing Tax Loopholes Act of*
 4 2010 and on or before the date which is 90 days
 5 after such date, such component meets the cri-
 6 teria described in subparagraph (A) or is equal
 7 to or below a U factor of 0.30 and SHGC of
 8 0.30, and

9 “(C) in the case of any component which is
 10 a garage door, such component is equal to or
 11 below a U factor of 0.30 and SHGC of 0.30.”.

12 (b) *EFFECTIVE DATE.*—The amendment made by this
 13 section shall apply to property placed in service after the
 14 date of the enactment of this Act.

15 **Subtitle B—Individual Tax Relief**

16 **PART I—MISCELLANEOUS PROVISIONS**

17 **SEC. 221. DEDUCTION FOR CERTAIN EXPENSES OF ELEMEN-** 18 **TARY AND SECONDARY SCHOOL TEACHERS.**

19 (a) *IN GENERAL.*—Subparagraph (D) of section
 20 62(a)(2) is amended by striking “or 2009” and inserting
 21 “2009, or 2010”.

22 (b) *EFFECTIVE DATE.*—The amendment made by this
 23 section shall apply to taxable years beginning after Decem-
 24 ber 31, 2009.

1 **SEC. 222. ADDITIONAL STANDARD DEDUCTION FOR STATE**
2 **AND LOCAL REAL PROPERTY TAXES.**

3 (a) *IN GENERAL.*—Subparagraph (C) of section
4 63(c)(1) is amended by striking “or 2009” and inserting
5 “2009, or 2010”.

6 (b) *EFFECTIVE DATE.*—The amendment made by this
7 section shall apply to taxable years beginning after Decem-
8 ber 31, 2009.

9 **SEC. 223. DEDUCTION OF STATE AND LOCAL SALES TAXES.**

10 (a) *IN GENERAL.*—Subparagraph (I) of section
11 164(b)(5) is amended by striking “January 1, 2010” and
12 inserting “January 1, 2011”.

13 (b) *EFFECTIVE DATE.*—The amendment made by this
14 section shall apply to taxable years beginning after Decem-
15 ber 31, 2009.

16 **SEC. 224. CONTRIBUTIONS OF CAPITAL GAIN REAL PROP-**
17 **ERTY MADE FOR CONSERVATION PURPOSES.**

18 (a) *IN GENERAL.*—Clause (vi) of section 170(b)(1)(E)
19 is amended by striking “December 31, 2009” and inserting
20 “December 31, 2010”.

21 (b) *CONTRIBUTIONS BY CERTAIN CORPORATE FARM-*
22 *ERS AND RANCHERS.*—Clause (iii) of section 170(b)(2)(B)
23 is amended by striking “December 31, 2009” and inserting
24 “December 31, 2010”.

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to contributions made in taxable years*
3 *beginning after December 31, 2009.*

4 **SEC. 225. ABOVE-THE-LINE DEDUCTION FOR QUALIFIED**
5 **TUITION AND RELATED EXPENSES.**

6 (a) *IN GENERAL.*—*Subsection (e) of section 222 is*
7 *amended by striking “December 31, 2009” and inserting*
8 *“December 31, 2010”.*

9 (b) *EFFECTIVE DATE.*—*The amendment made by this*
10 *section shall apply to taxable years beginning after Decem-*
11 *ber 31, 2009.*

12 (c) *TEMPORARY COORDINATION WITH HOPE AND*
13 *LIFETIME LEARNING CREDITS.*—*In the case of any tax-*
14 *payer for any taxable year beginning in 2010, no deduction*
15 *shall be allowed under section 222 of the Internal Revenue*
16 *Code of 1986 if—*

17 (1) *the taxpayer’s net Federal income tax reduc-*
18 *tion which would be attributable to such deduction for*
19 *such taxable year, is less than*

20 (2) *the credit which would be allowed to the tax-*
21 *payer for such taxable year under section 25A of such*
22 *Code (determined without regard to sections 25A(e)*
23 *and 26 of such Code).*

1 **SEC. 226. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RE-**
 2 **TIREMENT PLANS FOR CHARITABLE PUR-**
 3 **POSES.**

4 (a) *IN GENERAL.*—Subparagraph (F) of section
 5 408(d)(8) is amended by striking “December 31, 2009” and
 6 inserting “December 31, 2010”.

7 (b) *EFFECTIVE DATE.*—The amendment made by this
 8 section shall apply to distributions made in taxable years
 9 beginning after December 31, 2009.

10 **SEC. 227. LOOK-THRU OF CERTAIN REGULATED INVEST-**
 11 **MENT COMPANY STOCK IN DETERMINING**
 12 **GROSS ESTATE OF NONRESIDENTS.**

13 (a) *IN GENERAL.*—Paragraph (3) of section 2105(d)
 14 is amended by striking “December 31, 2009” and inserting
 15 “December 31, 2010”.

16 (b) *EFFECTIVE DATE.*—The amendment made by this
 17 section shall apply to estates of decedents dying after De-
 18 cember 31, 2009.

19 **PART II—LOW-INCOME HOUSING CREDITS**

20 **SEC. 231. ELECTION FOR DIRECT PAYMENT OF LOW-INCOME**
 21 **HOUSING CREDIT FOR 2010.**

22 (a) *IN GENERAL.*—Section 42 is amended by redesignig-
 23 nating subsection (n) as subsection (o) and by inserting
 24 after subsection (m) the following new subsection:

25 “(n) *ELECTION FOR DIRECT PAYMENT OF CREDIT.*—

1 “(1) *IN GENERAL.*—*The housing credit agency of*
2 *each State shall be allowed a credit in an amount*
3 *equal to such State’s 2010 low-income housing refund-*
4 *able credit election amount, which shall be payable by*
5 *the Secretary as provided in paragraph (5).*

6 “(2) *2010 LOW-INCOME HOUSING REFUNDABLE*
7 *CREDIT ELECTION AMOUNT.*—*For purposes of this*
8 *subsection, the term ‘2010 low-income housing refund-*
9 *able credit election amount’ means, with respect to*
10 *any State, such amount as the State may elect which*
11 *does not exceed 85 percent of the product of—*

12 “(A) *the sum of—*

13 “(i) *100 percent of the State housing*
14 *credit ceiling for 2010 which is attributable*
15 *to amounts described in clauses (i) and (iii)*
16 *of subsection (h)(3)(C), and*

17 “(ii) *40 percent of the State housing*
18 *credit ceiling for 2010 which is attributable*
19 *to amounts described in clauses (ii) and*
20 *(iv) of such subsection, multiplied by*

21 “(B) *10.*

22 “(3) *COORDINATION WITH NON-REFUNDABLE*
23 *CREDIT.*—*For purposes of this section, the amounts*
24 *described in clauses (i) through (iv) of subsection*
25 *(h)(3)(C) with respect to any State for 2010 shall*

1 *each be reduced by so much of such amount as is*
2 *taken into account in determining the amount of the*
3 *credit allowed with respect to such State under para-*
4 *graph (1).*

5 “(4) *SPECIAL RULE FOR BASIS.*—*Basis of a*
6 *qualified low-income building shall not be reduced by*
7 *the amount of any payment made under this sub-*
8 *section.*

9 “(5) *PAYMENT OF CREDIT; USE TO FINANCE*
10 *LOW-INCOME BUILDINGS.*—*The Secretary shall pay to*
11 *the housing credit agency of each State an amount*
12 *equal to the credit allowed under paragraph (1).*
13 *Rules similar to the rules of subsections (c) and (d)*
14 *of section 1602 of the American Recovery and Rein-*
15 *vestment Tax Act of 2009 shall apply with respect to*
16 *any payment made under this paragraph, except that*
17 *such subsection (d) shall be applied by substituting*
18 *‘January 1, 2012’ for ‘January 1, 2011’.*”

19 “(b) *CONFORMING AMENDMENT.*—*Section 1324(b)(2) of*
20 *title 31, United States Code, is amended by inserting*
21 *“42(n),” after “36C.”*

1 ***Subtitle C—Business Tax Relief***

2 ***SEC. 241. RESEARCH CREDIT.***

3 (a) *IN GENERAL.*—Subparagraph (B) of section
4 41(h)(1) is amended by striking “December 31, 2009” and
5 inserting “December 31, 2010”.

6 (b) *CONFORMING AMENDMENT.*—Subparagraph (D) of
7 section 45C(b)(1) is amended by striking “December 31,
8 2009” and inserting “December 31, 2010”.

9 (c) *EFFECTIVE DATE.*—The amendments made by this
10 section shall apply to amounts paid or incurred after De-
11 cember 31, 2009.

12 ***SEC. 242. INDIAN EMPLOYMENT TAX CREDIT.***

13 (a) *IN GENERAL.*—Subsection (f) of section 45A is
14 amended by striking “December 31, 2009” and inserting
15 “December 31, 2010”.

16 (b) *EFFECTIVE DATE.*—The amendment made by this
17 section shall apply to taxable years beginning after Decem-
18 ber 31, 2009.

19 ***SEC. 243. NEW MARKETS TAX CREDIT.***

20 (a) *IN GENERAL.*—Subparagraph (F) of section
21 45D(f)(1) is amended by inserting “and 2010” after
22 “2009”.

23 (b) *CONFORMING AMENDMENT.*—Paragraph (3) of sec-
24 tion 45D(f) is amended by striking “2014” and inserting
25 “2015”.

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to calendar years beginning after 2009.*

3 **SEC. 244. RAILROAD TRACK MAINTENANCE CREDIT.**

4 (a) *IN GENERAL.*—*Subsection (f) of section 45G is*
5 *amended by striking “January 1, 2010” and inserting*
6 *“January 1, 2011”.*

7 (b) *EFFECTIVE DATE.*—*The amendment made by this*
8 *section shall apply to expenditures paid or incurred in tax-*
9 *able years beginning after December 31, 2009.*

10 **SEC. 245. MINE RESCUE TEAM TRAINING CREDIT.**

11 (a) *IN GENERAL.*—*Subsection (e) of section 45N is*
12 *amended by striking “December 31, 2009” and inserting*
13 *“December 31, 2010”.*

14 (b) *CREDIT ALLOWABLE AGAINST AMT.*—*Subpara-*
15 *graph (B) of section 38(c)(4), as amended by section 105,*
16 *is amended—*

17 (1) *by redesignating clauses (vii) through (x) as*
18 *clauses (viii) through (xi), respectively; and*

19 (2) *by inserting after clause (vi) the following*
20 *new clause:*

21 *“(vii) the credit determined under sec-*
22 *tion 45N.”.*

23 (c) *EFFECTIVE DATE.*—

24 (1) *IN GENERAL.*—*Except as provided in para-*
25 *graph (2), the amendments made by this section shall*

1 *apply to taxable years beginning after December 31,*
2 *2009.*

3 (2) *ALLOWANCE AGAINST AMT.—The amend-*
4 *ments made by subsection (b) shall apply to credits*
5 *determined for taxable years beginning after Decem-*
6 *ber 31, 2009, and to carrybacks of such credits.*

7 **SEC. 246. EMPLOYER WAGE CREDIT FOR EMPLOYEES WHO**
8 **ARE ACTIVE DUTY MEMBERS OF THE UNI-**
9 **FORMED SERVICES.**

10 (a) *IN GENERAL.—Subsection (f) of section 45P is*
11 *amended by striking “December 31, 2009” and inserting*
12 *“December 31, 2010”.*

13 (b) *EFFECTIVE DATE.—The amendment made by this*
14 *section shall apply to payments made after December 31,*
15 *2009.*

16 **SEC. 247. 5-YEAR DEPRECIATION FOR FARMING BUSINESS**
17 **MACHINERY AND EQUIPMENT.**

18 (a) *IN GENERAL.—Clause (vii) of section 168(e)(3)(B)*
19 *is amended by striking “January 1, 2010” and inserting*
20 *“January 1, 2011”.*

21 (b) *EFFECTIVE DATE.—The amendment made by this*
22 *section shall apply to property placed in service after De-*
23 *cember 31, 2009.*

1 **SEC. 248. 15-YEAR STRAIGHT-LINE COST RECOVERY FOR**
2 **QUALIFIED LEASEHOLD IMPROVEMENTS,**
3 **QUALIFIED RESTAURANT BUILDINGS AND IM-**
4 **PROVEMENTS, AND QUALIFIED RETAIL IM-**
5 **PROVEMENTS.**

6 (a) *IN GENERAL.*—*Clauses (iv), (v), and (ix) of section*
7 *168(e)(3)(E) are each amended by striking “January 1,*
8 *2010” and inserting “January 1, 2011”.*

9 (b) *CONFORMING AMENDMENTS.*—

10 (1) *Clause (i) of section 168(e)(7)(A) is amended*
11 *by striking “if such building is placed in service after*
12 *December 31, 2008, and before January 1, 2010,”.*

13 (2) *Paragraph (8) of section 168(e) is amended*
14 *by striking subparagraph (E).*

15 (c) *EFFECTIVE DATE.*—*The amendments made by this*
16 *section shall apply to property placed in service after De-*
17 *cember 31, 2009.*

18 **SEC. 249. 7-YEAR RECOVERY PERIOD FOR MOTORSPORTS**
19 **ENTERTAINMENT COMPLEXES.**

20 (a) *IN GENERAL.*—*Subparagraph (D) of section*
21 *168(i)(15) is amended by striking “December 31, 2009” and*
22 *inserting “December 31, 2010”.*

23 (b) *EFFECTIVE DATE.*—*The amendment made by this*
24 *section shall apply to property placed in service after De-*
25 *cember 31, 2009.*

1 **SEC. 250. ACCELERATED DEPRECIATION FOR BUSINESS**
2 **PROPERTY ON AN INDIAN RESERVATION.**

3 (a) *IN GENERAL.*—Paragraph (8) of section 168(j) is
4 amended by striking “December 31, 2009” and inserting
5 “December 31, 2010”.

6 (b) *EFFECTIVE DATE.*—The amendment made by this
7 section shall apply to property placed in service after De-
8 cember 31, 2009.

9 **SEC. 251. ENHANCED CHARITABLE DEDUCTION FOR CON-**
10 **TRIBUTIONS OF FOOD INVENTORY.**

11 (a) *IN GENERAL.*—Clause (iv) of section 170(e)(3)(C)
12 is amended by striking “December 31, 2009” and inserting
13 “December 31, 2010”.

14 (b) *EFFECTIVE DATE.*—The amendment made by this
15 section shall apply to contributions made after December
16 31, 2009.

17 **SEC. 252. ENHANCED CHARITABLE DEDUCTION FOR CON-**
18 **TRIBUTIONS OF BOOK INVENTORIES TO PUB-**
19 **LIC SCHOOLS.**

20 (a) *IN GENERAL.*—Clause (iv) of section 170(e)(3)(D)
21 is amended by striking “December 31, 2009” and inserting
22 “December 31, 2010”.

23 (b) *EFFECTIVE DATE.*—The amendment made by this
24 section shall apply to contributions made after December
25 31, 2009.

1 **SEC. 253. ENHANCED CHARITABLE DEDUCTION FOR COR-**
2 **PORATE CONTRIBUTIONS OF COMPUTER IN-**
3 **VENTORY FOR EDUCATIONAL PURPOSES.**

4 (a) *IN GENERAL.*—Subparagraph (G) of section
5 170(e)(6) is amended by striking “December 31, 2009” and
6 inserting “December 31, 2010”.

7 (b) *EFFECTIVE DATE.*—The amendment made by this
8 section shall apply to contributions made in taxable years
9 beginning after December 31, 2009.

10 **SEC. 254. ELECTION TO EXPENSE MINE SAFETY EQUIP-**
11 **MENT.**

12 (a) *IN GENERAL.*—Subsection (g) of section 179E is
13 amended by striking “December 31, 2009” and inserting
14 “December 31, 2010”.

15 (b) *EFFECTIVE DATE.*—The amendment made by this
16 section shall apply to property placed in service after De-
17 cember 31, 2009.

18 **SEC. 255. SPECIAL EXPENSING RULES FOR CERTAIN FILM**
19 **AND TELEVISION PRODUCTIONS.**

20 (a) *IN GENERAL.*—Subsection (f) of section 181 is
21 amended by striking “December 31, 2009” and inserting
22 “December 31, 2010”.

23 (b) *EFFECTIVE DATE.*—The amendment made by this
24 section shall apply to productions commencing after Decem-
25 ber 31, 2009.

1 **SEC. 256. EXPENSING OF ENVIRONMENTAL REMEDIATION**
2 **COSTS.**

3 (a) *IN GENERAL.*—Subsection (h) of section 198 is
4 amended by striking “December 31, 2009” and inserting
5 “December 31, 2010”.

6 (b) *EFFECTIVE DATE.*—The amendment made by this
7 section shall apply to expenditures paid or incurred after
8 December 31, 2009.

9 **SEC. 257. DEDUCTION ALLOWABLE WITH RESPECT TO IN-**
10 **COME ATTRIBUTABLE TO DOMESTIC PRODUC-**
11 **TION ACTIVITIES IN PUERTO RICO.**

12 (a) *IN GENERAL.*—Subparagraph (C) of section
13 199(d)(8) is amended—

14 (1) by striking “first 4 taxable years” and in-
15 sserting “first 5 taxable years”; and

16 (2) by striking “January 1, 2010” and inserting
17 “January 1, 2011”.

18 (b) *EFFECTIVE DATE.*—The amendments made by this
19 section shall apply to taxable years beginning after Decem-
20 ber 31, 2009.

21 **SEC. 258. MODIFICATION OF TAX TREATMENT OF CERTAIN**
22 **PAYMENTS TO CONTROLLING EXEMPT ORGA-**
23 **NIZATIONS.**

24 (a) *IN GENERAL.*—Clause (iv) of section 512(b)(13)(E)
25 is amended by striking “December 31, 2009” and inserting
26 “December 31, 2010”.

1 (b) *EFFECTIVE DATE.*—*The amendment made by this*
2 *section shall apply to payments received or accrued after*
3 *December 31, 2009.*

4 **SEC. 259. EXCLUSION OF GAIN OR LOSS ON SALE OR EX-**
5 **CHANGE OF CERTAIN BROWNFIELD SITES**
6 **FROM UNRELATED BUSINESS INCOME.**

7 (a) *IN GENERAL.*—*Subparagraph (K) of section*
8 *512(b)(19) is amended by striking “December 31, 2009”*
9 *and inserting “December 31, 2010”.*

10 (b) *EFFECTIVE DATE.*—*The amendment made by this*
11 *section shall apply to property acquired after December 31,*
12 *2009.*

13 **SEC. 260. TIMBER REIT MODERNIZATION.**

14 (a) *IN GENERAL.*—*Paragraph (8) of section 856(c) is*
15 *amended by striking “means” and all that follows and in-*
16 *serting “means December 31, 2010.”.*

17 (b) *CONFORMING AMENDMENTS.*—

18 (1) *Subparagraph (I) of section 856(c)(2) is*
19 *amended by striking “the first taxable year beginning*
20 *after the date of the enactment of this subparagraph”*
21 *and inserting “a taxable year beginning on or before*
22 *the termination date”.*

23 (2) *Clause (iii) of section 856(c)(5)(H) is*
24 *amended by inserting “in taxable years beginning”*
25 *after “dispositions”.*

1 (3) *Clause (v) of section 857(b)(6)(D) is amended*
2 *by inserting “in a taxable year beginning” after*
3 *“sale”.*

4 (4) *Subparagraph (G) of section 857(b)(6) is*
5 *amended by inserting “in a taxable year beginning”*
6 *after “In the case of a sale”.*

7 (c) *EFFECTIVE DATE.—The amendments made by this*
8 *section shall apply to taxable years ending after May 22,*
9 *2009.*

10 **SEC. 261. TREATMENT OF CERTAIN DIVIDENDS OF REGU-**
11 **LATED INVESTMENT COMPANIES.**

12 (a) *IN GENERAL.—Paragraphs (1)(C) and (2)(C) of*
13 *section 871(k) are each amended by striking “December 31,*
14 *2009” and inserting “December 31, 2010”.*

15 (b) *EFFECTIVE DATE.—The amendments made by this*
16 *section shall apply to taxable years beginning after Decem-*
17 *ber 31, 2009.*

18 **SEC. 262. RIC QUALIFIED INVESTMENT ENTITY TREATMENT**
19 **UNDER FIRPTA.**

20 (a) *IN GENERAL.—Clause (ii) of section 897(h)(4)(A)*
21 *is amended by striking “December 31, 2009” and inserting*
22 *“December 31, 2010”.*

23 (b) *EFFECTIVE DATE.—*

24 (1) *IN GENERAL.—The amendment made by sub-*
25 *section (a) shall take effect on January 1, 2010. Not-*

1 *withstanding the preceding sentence, such amendment*
2 *shall not apply with respect to the withholding re-*
3 *quirement under section 1445 of the Internal Revenue*
4 *Code of 1986 for any payment made before the date*
5 *of the enactment of this Act.*

6 (2) *AMOUNTS WITHHELD ON OR BEFORE DATE*
7 *OF ENACTMENT.—In the case of a regulated invest-*
8 *ment company—*

9 (A) *which makes a distribution after De-*
10 *cember 31, 2009, and before the date of the enact-*
11 *ment of this Act; and*

12 (B) *which would (but for the second sen-*
13 *tence of paragraph (1)) have been required to*
14 *withhold with respect to such distribution under*
15 *section 1445 of such Code,*

16 *such investment company shall not be liable to any*
17 *person to whom such distribution was made for any*
18 *amount so withheld and paid over to the Secretary of*
19 *the Treasury.*

20 **SEC. 263. EXCEPTIONS FOR ACTIVE FINANCING INCOME.**

21 (a) *IN GENERAL.—Sections 953(e)(10) and 954(h)(9)*
22 *are each amended by striking “January 1, 2010” and in-*
23 *serting “January 1, 2011”.*

1 (b) *CONFORMING AMENDMENT.*—Section 953(e)(10) is
2 amended by striking “December 31, 2009” and inserting
3 “December 31, 2010”.

4 (c) *EFFECTIVE DATE.*—The amendments made by this
5 section shall apply to taxable years of foreign corporations
6 beginning after December 31, 2009, and to taxable years
7 of United States shareholders with or within which any
8 such taxable year of such foreign corporation ends.

9 **SEC. 264. LOOK-THRU TREATMENT OF PAYMENTS BETWEEN**
10 **RELATED CONTROLLED FOREIGN CORPORA-**
11 **TIONS UNDER FOREIGN PERSONAL HOLDING**
12 **COMPANY RULES.**

13 (a) *IN GENERAL.*—Subparagraph (C) of section
14 954(c)(6) is amended by striking “January 1, 2010” and
15 inserting “January 1, 2011”.

16 (b) *EFFECTIVE DATE.*—The amendment made by this
17 section shall apply to taxable years of foreign corporations
18 beginning after December 31, 2009, and to taxable years
19 of United States shareholders with or within which any
20 such taxable year of such foreign corporation ends.

1 **SEC. 265. BASIS ADJUSTMENT TO STOCK OF S CORPS MAK-**
2 **ING CHARITABLE CONTRIBUTIONS OF PROP-**
3 **ERTY.**

4 (a) *IN GENERAL.*—Paragraph (2) of section 1367(a)
5 is amended by striking “December 31, 2009” and inserting
6 “December 31, 2010”.

7 (b) *EFFECTIVE DATE.*—The amendment made by this
8 section shall apply to contributions made in taxable years
9 beginning after December 31, 2009.

10 **SEC. 266. EMPOWERMENT ZONE TAX INCENTIVES.**

11 (a) *IN GENERAL.*—Section 1391 is amended—

12 (1) by striking “December 31, 2009” in sub-
13 section (d)(1)(A)(i) and inserting “December 31,
14 2010”; and

15 (2) by striking the last sentence of subsection
16 (h)(2).

17 (b) *INCREASED EXCLUSION OF GAIN ON STOCK OF EM-*
18 *POWERMENT ZONE BUSINESSES.*—Subparagraph (C) of
19 section 1202(a)(2) is amended—

20 (1) by striking “December 31, 2014” and insert-
21 ing “December 31, 2015”; and

22 (2) by striking “2014” in the heading and insert-
23 ing “2015”.

24 (c) *TREATMENT OF CERTAIN TERMINATION DATES*
25 *SPECIFIED IN NOMINATIONS.*—In the case of a designation
26 of an empowerment zone the nomination for which included

1 a termination date which is contemporaneous with the date
 2 specified in subparagraph (A)(i) of section 1391(d)(1) of
 3 the Internal Revenue Code of 1986 (as in effect before the
 4 enactment of this Act), subparagraph (B) of such section
 5 shall not apply with respect to such designation unless,
 6 after the date of the enactment of this section, the entity
 7 which made such nomination reconfirms such termination
 8 date, or amends the nomination to provide for a new termi-
 9 nation date, in such manner as the Secretary of the Treas-
 10 ury (or the Secretary's designee) may provide.

11 (d) *EFFECTIVE DATE.*—The amendments made by this
 12 section shall apply to periods after December 31, 2009.

13 **SEC. 267. TAX INCENTIVES FOR INVESTMENT IN THE DIS-**
 14 **TRICT OF COLUMBIA.**

15 (a) *IN GENERAL.*—Subsection (f) of section 1400 is
 16 amended by striking “December 31, 2009” each place it ap-
 17 pears and inserting “December 31, 2010”.

18 (b) *TAX-EXEMPT DC EMPOWERMENT ZONE BONDS.*—
 19 Subsection (b) of section 1400A is amended by striking “De-
 20 cember 31, 2009” and inserting “December 31, 2010”.

21 (c) *ZERO-PERCENT CAPITAL GAINS RATE.*—

22 (1) *ACQUISITION DATE.*—Paragraphs (2)(A)(i),
 23 (3)(A), (4)(A)(i), and (4)(B)(i)(I) of section 1400B(b)
 24 are each amended by striking “January 1, 2010” and
 25 inserting “January 1, 2011”.

1 (2) *LIMITATION ON PERIOD OF GAINS.*—

2 (A) *IN GENERAL.*—*Paragraph (2) of section*
3 *1400B(e) is amended—*

4 (i) *by striking “December 31, 2014”*
5 *and inserting “December 31, 2015”; and*

6 (ii) *by striking “2014” in the heading*
7 *and inserting “2015”.*

8 (B) *PARTNERSHIPS AND S-CORPS.*—*Para-*
9 *graph (2) of section 1400B(g) is amended by*
10 *striking “December 31, 2014” and inserting “De-*
11 *cember 31, 2015”.*

12 (d) *FIRST-TIME HOMEBUYER CREDIT.*—*Subsection (i)*
13 *of section 1400C is amended by striking “January 1, 2010”*
14 *and inserting “January 1, 2011”.*

15 (e) *EFFECTIVE DATES.*—

16 (1) *IN GENERAL.*—*Except as otherwise provided*
17 *in this subsection, the amendments made by this sec-*
18 *tion shall apply to periods after December 31, 2009.*

19 (2) *TAX-EXEMPT DC EMPOWERMENT ZONE*
20 *BONDS.*—*The amendment made by subsection (b)*
21 *shall apply to bonds issued after December 31, 2009.*

22 (3) *ACQUISITION DATES FOR ZERO-PERCENT*
23 *CAPITAL GAINS RATE.*—*The amendments made by*
24 *subsection (c) shall apply to property acquired or sub-*
25 *stantially improved after December 31, 2009.*

1 (4) *HOMEBUYER CREDIT.*—*The amendment*
2 *made by subsection (d) shall apply to homes pur-*
3 *chased after December 31, 2009.*

4 **SEC. 268. RENEWAL COMMUNITY TAX INCENTIVES.**

5 (a) *IN GENERAL.*—*Subsection (b) of section 1400E is*
6 *amended—*

7 (1) *by striking “December 31, 2009” in para-*
8 *graphs (1)(A) and (3) and inserting “December 31,*
9 *2010”; and*

10 (2) *by striking “January 1, 2010” in paragraph*
11 *(3) and inserting “January 1, 2011”.*

12 (b) *ZERO-PERCENT CAPITAL GAINS RATE.*—

13 (1) *ACQUISITION DATE.*—*Paragraphs (2)(A)(i),*
14 *(3)(A), (4)(A)(i), and (4)(B)(i) of section 1400F(b)*
15 *are each amended by striking “January 1, 2010” and*
16 *inserting “January 1, 2011”.*

17 (2) *LIMITATION ON PERIOD OF GAINS.*—*Para-*
18 *graph (2) of section 1400F(c) is amended—*

19 (A) *by striking “December 31, 2014” and*
20 *inserting “December 31, 2015”; and*

21 (B) *by striking “2014” in the heading and*
22 *inserting “2015”.*

23 (3) *CLERICAL AMENDMENT.*—*Subsection (d) of*
24 *section 1400F is amended by striking “and ‘December*
25 *31, 2014’ for ‘December 31, 2014’ ”.*

1 (c) *COMMERCIAL REVITALIZATION DEDUCTION.*—

2 (1) *IN GENERAL.*—Subsection (g) of section
3 1400I is amended by striking “December 31, 2009”
4 and inserting “December 31, 2010”.

5 (2) *CONFORMING AMENDMENT.*—Subparagraph
6 (A) of section 1400I(d)(2) is amended by striking
7 “after 2001 and before 2010” and inserting “which
8 begins after 2001 and before the date referred to in
9 subsection (g)”.

10 (d) *INCREASED EXPENSING UNDER SECTION 179.*—
11 Subparagraph (A) of section 1400J(b)(1) is amended by
12 striking “January 1, 2010” and inserting “January 1,
13 2011”.

14 (e) *TREATMENT OF CERTAIN TERMINATION DATES*
15 *SPECIFIED IN NOMINATIONS.*—In the case of a designation
16 of a renewal community the nomination for which included
17 a termination date which is contemporaneous with the date
18 specified in subparagraph (A) of section 1400E(b)(1) of the
19 Internal Revenue Code of 1986 (as in effect before the enact-
20 ment of this Act), subparagraph (B) of such section shall
21 not apply with respect to such designation unless, after the
22 date of the enactment of this section, the entity which made
23 such nomination reconfirms such termination date, or
24 amends the nomination to provide for a new termination

1 *date, in such manner as the Secretary of the Treasury (or*
2 *the Secretary's designee) may provide.*

3 *(f) EFFECTIVE DATES.—*

4 *(1) IN GENERAL.—Except as otherwise provided*
5 *in this subsection, the amendments made by this sec-*
6 *tion shall apply to periods after December 31, 2009.*

7 *(2) ACQUISITIONS.—The amendments made by*
8 *subsections (b)(1) and (d) shall apply to acquisitions*
9 *after December 31, 2009.*

10 *(3) COMMERCIAL REVITALIZATION DEDUCTION.—*

11 *(A) IN GENERAL.—The amendment made*
12 *by subsection (c)(1) shall apply to buildings*
13 *placed in service after December 31, 2009.*

14 *(B) CONFORMING AMENDMENT.—The*
15 *amendment made by subsection (c)(2) shall*
16 *apply to calendar years beginning after Decem-*
17 *ber 31, 2009.*

18 **SEC. 269. TEMPORARY INCREASE IN LIMIT ON COVER OVER**
19 **OF RUM EXCISE TAXES TO PUERTO RICO AND**
20 **THE VIRGIN ISLANDS.**

21 *(a) IN GENERAL.—Paragraph (1) of section 7652(f) is*
22 *amended by striking “January 1, 2010” and inserting*
23 *“January 1, 2011”.*

1 (b) *EFFECTIVE DATE.*—*The amendment made by this*
2 *section shall apply to distilled spirits brought into the*
3 *United States after December 31, 2009.*

4 **SEC. 270. PAYMENT TO AMERICAN SAMOA IN LIEU OF EX-**
5 **TENSION OF ECONOMIC DEVELOPMENT**
6 **CREDIT.**

7 *The Secretary of the Treasury (or his designee) shall*
8 *pay \$18,000,000 to the Government of American Samoa for*
9 *purposes of economic development. The payment made*
10 *under the preceding sentence shall be treated for purposes*
11 *of section 1324 of title 31, United States Code, as a refund*
12 *of internal revenue collections to which such section applies.*

13 **SEC. 271. ELECTION TO TEMPORARILY UTILIZE UNUSED**
14 **AMT CREDITS DETERMINED BY DOMESTIC IN-**
15 **VESTMENT.**

16 (a) *IN GENERAL.*—*Section 53 is amended by adding*
17 *at the end the following new subsection:*

18 “(g) *ELECTION FOR CORPORATIONS WITH NEW DO-*
19 *MESTIC INVESTMENTS.*—

20 “(1) *IN GENERAL.*—*If a corporation elects to*
21 *have this subsection apply for its first taxable year*
22 *beginning after December 31, 2009, the limitation im-*
23 *posed by subsection (c) for such taxable year shall be*
24 *increased by the AMT credit adjustment amount.*

1 “(2) *AMT CREDIT ADJUSTMENT AMOUNT.*—For
2 purposes of paragraph (1), the term ‘AMT credit ad-
3 justment amount’ means, the lesser of—

4 “(A) 50 percent of a corporation’s min-
5 imum tax credit for its first taxable year begin-
6 ning after December 31, 2009, determined under
7 subsection (b), or

8 “(B) 10 percent of new domestic invest-
9 ments made during such taxable year.

10 “(3) *NEW DOMESTIC INVESTMENTS.*—For pur-
11 poses of this subsection, the term ‘new domestic in-
12 vestments’ means the cost of qualified property (as de-
13 fined in section 168(k)(2)(A)(i))—

14 “(A) the original use of which commences
15 with the taxpayer during the taxable year, and

16 “(B) which is placed in service in the
17 United States by the taxpayer during such tax-
18 able year.

19 “(4) *CREDIT REFUNDABLE.*—For purposes of
20 subsection (b) of section 6401, the aggregate increase
21 in the credits allowable under this part for any tax-
22 able year resulting from the application of this sub-
23 section shall be treated as allowed under subpart C
24 (and not under any other subpart). For purposes of
25 section 6425, any amount treated as so allowed shall

1 *be treated as a payment of estimated income tax for*
2 *the taxable year.*

3 “(5) *ELECTION.*—*An election under this sub-*
4 *section shall be made at such time and in such man-*
5 *ner as prescribed by the Secretary, and once made,*
6 *may be revoked only with the consent of the Sec-*
7 *retary. Not later than 90 days after the date of the*
8 *enactment of this subsection, the Secretary shall issue*
9 *guidance specifying such time and manner.*

10 “(6) *TREATMENT OF CERTAIN PARTNERSHIP IN-*
11 *VESTMENTS.*—*For purposes of this subsection, a cor-*
12 *poration shall take into account its allocable share of*
13 *any new domestic investments by a partnership for*
14 *any taxable year if, and only if, more than 90 per-*
15 *cent of the capital and profits interests in such part-*
16 *nership are owned by such corporation (directly or*
17 *indirectly) at all times during such taxable year.*

18 “(7) *NO DOUBLE BENEFIT.*—

19 “(A) *IN GENERAL.*—*A corporation making*
20 *an election under this subsection may not make*
21 *an election under subparagraph (H) of section*
22 *172(b)(1).*

23 “(B) *SPECIAL RULES WITH RESPECT TO*
24 *TAXPAYERS PREVIOUSLY ELECTING APPLICABLE*
25 *NET OPERATING LOSSES.*—*In the case of a cor-*

1 *poration which made an election under subpara-*
2 *graph (H) of section 172(b)(1) and elects the ap-*
3 *plication of this subsection—*

4 *“(i) ELECTION OF APPLICABLE NET*
5 *OPERATING LOSS TREATED AS REVOKED.—*

6 *The election under such subparagraph (H)*
7 *shall (notwithstanding clause (iii)(II) of*
8 *such subparagraph) be treated as having*
9 *been revoked by the taxpayer.*

10 *“(ii) COORDINATION WITH PROVISION*
11 *FOR EXPEDITED REFUND.—The amount*

12 *otherwise treated as a payment of estimated*
13 *income tax under the last sentence of para-*
14 *graph (4) shall be reduced (but not below*
15 *zero) by the aggregate increase in unpaid*
16 *tax liability determined under this chapter*
17 *by reason of the revocation of the election*
18 *under clause (i).*

19 *“(iii) APPLICATION OF STATUTE OF*
20 *LIMITATIONS.—With respect to the revoca-*
21 *tion of an election under clause (i)—*

22 *“(I) the statutory period for the*
23 *assessment of any deficiency attrib-*
24 *utable to such revocation shall not ex-*
25 *pire before the end of the 3-year period*

1 *beginning on the date of the election to*
2 *have this subsection apply, and*

3 “(II) *such deficiency may be as-*
4 *essed before the expiration of such 3-*
5 *year period notwithstanding the provi-*
6 *sions of any other law or rule of law*
7 *which would otherwise prevent such as-*
8 *essment.*

9 “(C) *EXCEPTION FOR ELIGIBLE SMALL*
10 *BUSINESSES.—Subparagraphs (A) and (B) shall*
11 *not apply to an eligible small business as defined*
12 *in section 172(b)(1)(H)(v)(II).*

13 “(8) *REGULATIONS.—The Secretary may issue*
14 *such regulations or other guidance as may be nec-*
15 *essary or appropriate to carry out the purposes of*
16 *this subsection, including to prevent fraud and abuse*
17 *under this subsection.”.*

18 “(b) *CONFORMING AMENDMENTS.—*

19 “(1) *Section 6211(b)(4)(A) is amended by insert-*
20 *ing “53(g),” after “53(e),”.*

21 “(2) *Section 1324(b)(2) of title 31, United States*
22 *Code, is amended by inserting “53(g),” after “53(e),”.*

23 “(c) *EFFECTIVE DATE.—The amendments made by this*
24 *section shall apply to taxable years beginning after Decem-*
25 *ber 31, 2009.*

1 **SEC. 272. STUDY OF EXTENDED TAX EXPENDITURES.**

2 (a) *FINDINGS.*—Congress finds the following:

3 (1) *Currently, the aggregate cost of Federal tax*
4 *expenditures rivals, or even exceeds, the amount of*
5 *total Federal discretionary spending.*

6 (2) *Given the escalating public debt, a critical*
7 *examination of this use of taxpayer dollars is essen-*
8 *tial.*

9 (3) *Additionally, tax expenditures can com-*
10 *plicate the Internal Revenue Code of 1986 for tax-*
11 *payers and complicate tax administration for the In-*
12 *ternal Revenue Service.*

13 (4) *To facilitate a better understanding of tax*
14 *expenditures in the future, it is constructive for legis-*
15 *lation extending these provisions to include a study of*
16 *such provisions.*

17 (b) *REQUIREMENT TO REPORT.*—Not later than No-
18 *vember 30, 2010, the Chief of Staff of the Joint Committee*
19 *on Taxation, in consultation with the Comptroller General*
20 *of the United States, shall submit to the Committee on Ways*
21 *and Means of the House of Representatives and the Com-*
22 *mittee on Finance of the Senate a report on each tax ex-*
23 *penditure (as defined in section 3(3) of the Congressional*
24 *Budget Impoundment Control Act of 1974 (2 U.S.C.*
25 *622(3)) extended by this title.*

1 (c) *ROLLING SUBMISSION OF REPORTS.*—The Chief of
2 *Staff of the Joint Committee on Taxation shall initially*
3 *submit the reports for each such tax expenditure enacted*
4 *in this subtitle (relating to business tax relief) and subtitle*
5 *A (relating to energy) in order of the tax expenditure incur-*
6 *ring the least aggregate cost to the greatest aggregate cost*
7 *(determined by reference to the cost estimate of this Act by*
8 *the Joint Committee on Taxation). Thereafter, such reports*
9 *may be submitted in such order as the Chief of Staff deter-*
10 *mines appropriate.*

11 (d) *CONTENTS OF REPORT.*—Such reports shall con-
12 *tain the following:*

13 (1) *An explanation of the tax expenditure and*
14 *any relevant economic, social, or other context under*
15 *which it was first enacted.*

16 (2) *A description of the intended purpose of the*
17 *tax expenditure.*

18 (3) *An analysis of the overall success of the tax*
19 *expenditure in achieving such purpose, and evidence*
20 *supporting such analysis.*

21 (4) *An analysis of the extent to which further ex-*
22 *tending the tax expenditure, or making it permanent,*
23 *would contribute to achieving such purpose.*

1 (5) *A description of the direct and indirect bene-*
2 *ficiaries of the tax expenditure, including identifying*
3 *any unintended beneficiaries.*

4 (6) *An analysis of whether the tax expenditure*
5 *is the most cost-effective method for achieving the pur-*
6 *pose for which it was intended, and a description of*
7 *any more cost-effective methods through which such*
8 *purpose could be accomplished.*

9 (7) *A description of any unintended effects of the*
10 *tax expenditure that are useful in understanding the*
11 *tax expenditure's overall value.*

12 (8) *An analysis of how the tax expenditure could*
13 *be modified to better achieve its original purpose.*

14 (9) *A brief description of any interactions (ac-*
15 *tual or potential) with other tax expenditures or di-*
16 *rect spending programs in the same or related budget*
17 *function worthy of further study.*

18 (10) *A description of any unavailable informa-*
19 *tion the staff of the Joint Committee on Taxation*
20 *may need to complete a more thorough examination*
21 *and analysis of the tax expenditure, and what must*
22 *be done to make such information available.*

23 (e) *MINIMUM ANALYSIS BY DEADLINE.—In the event*
24 *the Chief of Staff of the Joint Committee on Taxation con-*
25 *cludes it will not be feasible to complete all reports by the*

1 *date specified in subsection (a), at a minimum, the reports*
 2 *for each tax expenditure enacted in this subtitle (relating*
 3 *to business tax relief) and subtitle A (relating to energy)*
 4 *shall be completed by such date.*

5 ***Subtitle D—Temporary Disaster***
 6 ***Relief Provisions***

7 ***PART I—NATIONAL DISASTER RELIEF***

8 ***SEC. 281. WAIVER OF CERTAIN MORTGAGE REVENUE BOND***
 9 ***REQUIREMENTS.***

10 *(a) IN GENERAL.—Paragraph (11) of section 143(k)*
 11 *is amended by striking “January 1, 2010” and inserting*
 12 *“January 1, 2011”.*

13 *(b) SPECIAL RULE FOR RESIDENCES DESTROYED IN*
 14 *FEDERALLY DECLARED DISASTERS.—Paragraph (13) of*
 15 *section 143(k), as redesignated by subsection (c), is amended*
 16 *by striking “January 1, 2010” in subparagraphs (A)(i) and*
 17 *(B)(i) and inserting “January 1, 2011”.*

18 *(c) TECHNICAL AMENDMENT.—Subsection (k) of sec-*
 19 *tion 143 is amended by redesignating the second paragraph*
 20 *(12) (relating to special rules for residences destroyed in*
 21 *federally declared disasters) as paragraph (13).*

22 *(d) EFFECTIVE DATES.—*

23 *(1) IN GENERAL.—Except as otherwise provided*
 24 *in this subsection, the amendment made by this sec-*

1 *tion shall apply to bonds issued after December 31,*
2 *2009.*

3 (2) *RESIDENCES DESTROYED IN FEDERALLY DE-*
4 *CLARED DISASTERS.—The amendments made by sub-*
5 *section (b) shall apply with respect to disasters occur-*
6 *ring after December 31, 2009.*

7 (3) *TECHNICAL AMENDMENT.—The amendment*
8 *made by subsection (c) shall take effect as if included*
9 *in section 709 of the Tax Extenders and Alternative*
10 *Minimum Tax Relief Act of 2008.*

11 **SEC. 282. LOSSES ATTRIBUTABLE TO FEDERALLY DE-**
12 **CLARED DISASTERS.**

13 (a) *IN GENERAL.—Subclause (I) of section*
14 *165(h)(3)(B)(i) is amended by striking “January 1, 2010”*
15 *and inserting “January 1, 2011”.*

16 (b) *\$500 LIMITATION.—Paragraph (1) of section*
17 *165(h) is amended by striking “December 31, 2009” and*
18 *inserting “December 31, 2010”.*

19 (c) *EFFECTIVE DATE.—*

20 (1) *IN GENERAL.—The amendment made by sub-*
21 *section (a) shall apply to federally declared disasters*
22 *occurring after December 31, 2009.*

23 (2) *\$500 LIMITATION.—The amendment made by*
24 *subsection (b) shall apply to taxable years beginning*
25 *after December 31, 2009.*

1 **SEC. 283. SPECIAL DEPRECIATION ALLOWANCE FOR QUALI-**
2 **FIED DISASTER PROPERTY.**

3 (a) *IN GENERAL.*—Subclause (I) of section
4 168(n)(2)(A)(ii) is amended by striking “January 1, 2010”
5 and inserting “January 1, 2011”.

6 (b) *EFFECTIVE DATE.*—The amendment made by this
7 section shall apply to disasters occurring after December 31,
8 2009.

9 **SEC. 284. NET OPERATING LOSSES ATTRIBUTABLE TO FED-**
10 **ERALLY DECLARED DISASTERS.**

11 (a) *IN GENERAL.*—Subclause (I) of section
12 172(j)(1)(A)(i) is amended by striking “January 1, 2010”
13 and inserting “January 1, 2011”.

14 (b) *EFFECTIVE DATE.*—The amendment made by this
15 section shall apply to losses attributable to disasters occur-
16 ring after December 31, 2009.

17 **SEC. 285. EXPENSING OF QUALIFIED DISASTER EXPENSES.**

18 (a) *IN GENERAL.*—Subparagraph (A) of section
19 198A(b)(2) is amended by striking “January 1, 2010” and
20 inserting “January 1, 2011”.

21 (b) *EFFECTIVE DATE.*—The amendment made by this
22 section shall apply to expenditures on account of disasters
23 occurring after December 31, 2009.

1 **PART II—REGIONAL PROVISIONS**

2 **Subpart A—New York Liberty Zone**

3 **SEC. 291. SPECIAL DEPRECIATION ALLOWANCE FOR NON-**
4 **RESIDENTIAL AND RESIDENTIAL REAL PROP-**
5 **ERTY.**

6 (a) *IN GENERAL.*—Subparagraph (A) of section
7 1400L(b)(2) is amended by striking “December 31, 2009”
8 and inserting “December 31, 2010”.

9 (b) *EFFECTIVE DATE.*—The amendment made by this
10 section shall apply to property placed in service after De-
11 cember 31, 2009.

12 **SEC. 292. TAX-EXEMPT BOND FINANCING.**

13 (a) *IN GENERAL.*—Subparagraph (D) of section
14 1400L(d)(2) is amended by striking “January 1, 2010” and
15 inserting “January 1, 2011”.

16 (b) *EFFECTIVE DATE.*—The amendment made by this
17 section shall apply to bonds issued after December 31, 2009.

18 **Subpart B—GO Zone**

19 **SEC. 295. INCREASE IN REHABILITATION CREDIT.**

20 (a) *IN GENERAL.*—Subsection (h) of section 1400N is
21 amended by striking “December 31, 2009” and inserting
22 “December 31, 2010”.

23 (b) *EFFECTIVE DATE.*—The amendment made by this
24 section shall apply to amounts paid or incurred after De-
25 cember 31, 2009.

1 **SEC. 296. WORK OPPORTUNITY TAX CREDIT WITH RESPECT**
 2 **TO CERTAIN INDIVIDUALS AFFECTED BY**
 3 **HURRICANE KATRINA FOR EMPLOYERS IN-**
 4 **SIDE DISASTER AREAS.**

5 (a) *IN GENERAL.*—Paragraph (1) of section 201(b) of
 6 the Katrina Emergency Tax Relief Act of 2005 is amended
 7 by striking “4-year” and inserting “5-year”.

8 (b) *EFFECTIVE DATE.*—The amendment made by sub-
 9 section (a) shall apply to individuals hired after August
 10 27, 2009.

11 **SEC. 297. EXTENSION OF LOW-INCOME HOUSING CREDIT**
 12 **RULES FOR BUILDINGS IN GO ZONES.**

13 Section 1400N(c)(5) is amended by striking “January
 14 1, 2011” and inserting “January 1, 2013”.

15 **TITLE III—PENSION PROVISIONS**
 16 **Subtitle A—Pension Funding Relief**
 17 **PART 1—SINGLE-EMPLOYER PLANS**

18 **SEC. 301. EXTENDED PERIOD FOR SINGLE-EMPLOYER DE-**
 19 **FINED BENEFIT PLANS TO AMORTIZE CER-**
 20 **TAIN SHORTFALL AMORTIZATION BASES.**

21 (a) *ERISA AMENDMENTS.*—

22 (1) *IN GENERAL.*—Section 303(c)(2) of the Em-
 23 ployee Retirement Income Security Act of 1974 (29
 24 U.S.C. 1083(c)(2)) is amended by adding at the end
 25 the following subparagraphs:

26 “(D) *SPECIAL RULE.*—

1 “(i) *IN GENERAL.*—*In the case of the*
2 *shortfall amortization base of a plan for*
3 *any applicable plan year, the shortfall am-*
4 *ortization installments are the amounts de-*
5 *scribed in clause (ii) or (iii), if made appli-*
6 *cable by an election under clause (iv). In*
7 *the absence of a timely election, such in-*
8 *stallments shall be determined without re-*
9 *gard to this subparagraph.*

10 “(ii) *2 PLUS 7 AMORTIZATION SCHED-*
11 *ULE.*—*The shortfall amortization install-*
12 *ments described in this clause are—*

13 “(I) *in the case of the first 2 plan*
14 *years in the 9-plan-year period begin-*
15 *ning with the applicable plan year, in-*
16 *terest on the shortfall amortization*
17 *base (determined by using the effective*
18 *interest rate for the applicable plan*
19 *year), and*

20 “(II) *in the case of the last 7 plan*
21 *years in such 9-plan-year period, the*
22 *amounts necessary to amortize the bal-*
23 *ance of such shortfall amortization*
24 *base in level annual installments over*
25 *such last 7 plan years (determined*

1 *using the segment rates determined*
2 *under subparagraph (C) of subsection*
3 *(h)(2) for the applicable plan year, ap-*
4 *plied under rules similar to the rules of*
5 *subparagraph (B) of subsection (h)(2)).*

6 “(iii) *15-YEAR AMORTIZATION.—The*
7 *shortfall amortization installments de-*
8 *scribed in this clause are the amounts under*
9 *subparagraphs (A) and (B) determined by*
10 *substituting ‘15 plan-year period’ for ‘7-*
11 *plan-year period’.*

12 “(iv) *ELECTION.—*

13 “(I) *IN GENERAL.—The plan*
14 *sponsor may, with respect to a plan,*
15 *elect, with respect to any of not more*
16 *than 2 applicable plan years, to deter-*
17 *mine shortfall amortization install-*
18 *ments under this subparagraph. An*
19 *election under either clause (ii) or*
20 *clause (iii) may be made with respect*
21 *to either of such applicable plan years.*

22 “(II) *ELIGIBILITY FOR ELEC-*
23 *TION.—An election may be made to de-*
24 *termine shortfall amortization install-*
25 *ments under this subparagraph with*

1 *respect to a plan only if, as of the date*
2 *of the election—*

3 *“(aa) the plan sponsor is not*
4 *a debtor in a case under title 11,*
5 *United States Code, or similar*
6 *Federal or State law,*

7 *“(bb) there are no unpaid*
8 *minimum required contributions*
9 *with respect to the plan for pur-*
10 *poses of section 4971 of the Inter-*
11 *nal Revenue Code of 1986,*

12 *“(cc) there is no lien in favor*
13 *of the plan under subsection (k) or*
14 *under section 430(k) of such Code,*
15 *and*

16 *“(dd) a distress termination*
17 *has not been initiated for the plan*
18 *under section 4041(c).*

19 *“(III) RULES RELATING TO ELEC-*
20 *TION.—Such election shall be made at*
21 *such times, and in such form and*
22 *manner, as shall be prescribed by the*
23 *Secretary of the Treasury and shall be*
24 *irrevocable, except under such limited*
25 *circumstances, and subject to such con-*

1 *ditions, as such Secretary may pre-*
2 *scribe.*

3 “(E) *APPLICABLE PLAN YEAR.*—

4 “(i) *IN GENERAL.*—*For purposes of*
5 *this paragraph, the term ‘applicable plan*
6 *year’ means, subject to the election of the*
7 *plan sponsor under subparagraph (D)(iv),*
8 *each of not more than 2 of the plan years*
9 *beginning in 2008, 2009, 2010, or 2011.*

10 “(ii) *SPECIAL RULE RELATING TO*
11 *2008.*—*A plan year may be elected as an ap-*
12 *plicable plan year pursuant to this sub-*
13 *paragraph only if the due date under sub-*
14 *section (j)(1) for the payment of the min-*
15 *imum required contribution for such plan*
16 *year occurs on or after March 10, 2010.*

17 “(F) *INCREASES IN SHORTFALL AMORTIZA-*
18 *TION INSTALLMENTS IN CASES OF EXCESS COM-*
19 *PENSATION OR CERTAIN DIVIDENDS OR STOCK*
20 *REDEMPTIONS.*—

21 “(i) *IN GENERAL.*—*If, with respect to*
22 *an election for an applicable plan year*
23 *under subparagraph (D), there is an in-*
24 *stallment acceleration amount with respect*
25 *to a plan for any plan year in the restric-*

1 *tion period (or if there is an installment ac-*
2 *celeration amount carried forward to a*
3 *plan year not in the restriction period),*
4 *then the shortfall amortization installment*
5 *otherwise determined and payable under*
6 *this paragraph for such plan year shall be*
7 *increased by such amount.*

8 *“(ii) BACK-END ADJUSTMENT TO AM-*
9 *ORTIZATION SCHEDULE.—Subject to rules*
10 *prescribed by the Secretary of the Treasury,*
11 *if a shortfall amortization installment with*
12 *respect to any shortfall amortization base*
13 *for an applicable plan year is required to*
14 *be increased for any plan year under clause*
15 *(i), subsequent shortfall amortization in-*
16 *stallments with respect to such base shall be*
17 *reduced, in reverse order of the otherwise re-*
18 *quired installments beginning with the final*
19 *scheduled installment, to the extent nec-*
20 *essary to limit the present value of such*
21 *subsequent shortfall amortization install-*
22 *ments (after application of this subpara-*
23 *graph) to the present value of the remaining*
24 *unamortized shortfall amortization base.*

1 “(iii) *INSTALLMENT ACCELERATION*
2 *AMOUNT.—For purposes of this subpara-*
3 *graph—*

4 “(I) *IN GENERAL.—The term ‘in-*
5 *stallment acceleration amount’ means,*
6 *with respect to any plan year in a re-*
7 *striction period with respect to an ap-*
8 *plicable plan year, the sum of—*

9 “(aa) *the aggregate amount*
10 *of excess employee compensation*
11 *determined under clause (iv) for*
12 *the plan year, plus*

13 “(bb) *the dividend and re-*
14 *demption amount determined*
15 *under clause (v) for the plan year.*

16 “(II) *CUMULATIVE LIMITATION.—*
17 *The installment acceleration amount*
18 *for any plan year shall not exceed the*
19 *excess (if any) of—*

20 “(aa) *the sum of the shortfall*
21 *amortization installments for the*
22 *plan year and all preceding plan*
23 *years in the amortization period*
24 *elected under subparagraph (D)*
25 *with respect to the shortfall amor-*

1 *tization base with respect to an*
2 *applicable year, determined with-*
3 *out regard to subparagraph (D)*
4 *and this subparagraph, over*

5 *“(bb) the sum of the shortfall*
6 *amortization installments for such*
7 *plan year and all such preceding*
8 *plan years, determined after ap-*
9 *plication of subparagraph (D)*
10 *(and in the case of any preceding*
11 *plan year, after application of*
12 *this subparagraph).*

13 *“(III) CARRYOVER OF EXCESS IN-*
14 *STALLMENT ACCELERATION*
15 *AMOUNTS.—*

16 *“(aa) IN GENERAL.—If the*
17 *installment acceleration amount*
18 *for any plan year (determined*
19 *without regard to subclause (II))*
20 *exceeds the limitation under sub-*
21 *clause (II), then, subject to item*
22 *(bb), such excess shall be treated*
23 *as an installment acceleration*
24 *amount for the succeeding plan*
25 *year.*

1 “(bb) *CAP TO APPLY.*—If any
2 *amount treated as an installment*
3 *acceleration amount under item*
4 *(aa) or this item with respect any*
5 *succeeding plan year, when added*
6 *to other installment acceleration*
7 *amounts (determined without re-*
8 *gard to subclause (II)) with re-*
9 *spect to the plan year, exceeds the*
10 *limitation under subclause (II),*
11 *the portion of such amount rep-*
12 *resenting such excess shall be*
13 *treated as an installment accelera-*
14 *tion amount with respect to the*
15 *next succeeding plan year.*

16 “(cc) *LIMITATION ON YEARS*
17 *TO WHICH AMOUNTS CARRIED*
18 *FORWARD.*—No amount shall be
19 *carried forward under item (aa)*
20 *or (bb) to a plan year which be-*
21 *gins after the last plan year in*
22 *the restriction period (or after the*
23 *second plan year following such*
24 *last plan year in the case of an*
25 *election year with respect to which*

1 15-year amortization was elected
2 under subparagraph (D)(iii).

3 “(dd) ORDERING RULES.—
4 For purposes of applying item
5 (bb), installment acceleration
6 amounts for the plan year (deter-
7 mined without regard to any car-
8 ryover under this clause) shall be
9 applied first against the limita-
10 tion under subclause (II) and then
11 carryovers to such plan year shall
12 be applied against such limitation
13 on a first-in, first-out basis.

14 “(iv) EXCESS EMPLOYEE COMPENSA-
15 TION.—

16 “(I) IN GENERAL.—For purposes
17 of this paragraph, the term ‘excess em-
18 ployee compensation’ means the sum
19 of—

20 “(aa) with respect to any
21 employee, for any plan year, the
22 excess (if any) of—

23 “(AA) the aggregate
24 amount includible in income
25 under chapter 1 of the Inter-

1 *nal Revenue Code of 1986 for*
2 *remuneration during the cal-*
3 *endar year in which such*
4 *plan year begins for services*
5 *performed by the employee*
6 *for the plan sponsor (whether*
7 *or not performed during such*
8 *calendar year), over*
9 *“(BB) \$1,000,000, plus*
10 *“(bb) the amount of assets set*
11 *aside or reserved (directly or indi-*
12 *rectly) in a trust (or other ar-*
13 *rangement as determined by the*
14 *Secretary of the Treasury), or*
15 *transferred to such a trust or*
16 *other arrangement, during the*
17 *calendar year by a plan sponsor*
18 *for purposes of paying deferred*
19 *compensation of an employee*
20 *under a nonqualified deferred*
21 *compensation plan (as defined in*
22 *section 409A of such Code) of the*
23 *plan sponsor.*

1 “(II) *NO DOUBLE COUNTING.*—No
2 *amount shall be taken into account*
3 *under subclause (I) more than once.*

4 “(III) *EMPLOYEE; REMUNERA-*
5 *TION.*—For purposes of this clause, the
6 *term ‘employee’ includes, with respect*
7 *to a calendar year, a self-employed in-*
8 *dividual who is treated as an employee*
9 *under section 401(c) of the Internal*
10 *Revenue Code of 1986 for the taxable*
11 *year ending during such calendar*
12 *year, and the term ‘remuneration’*
13 *shall include earned income of such an*
14 *individual.*

15 “(IV) *CERTAIN PAYMENTS UNDER*
16 *EXISTING CONTRACTS.*—There shall not
17 *be taken into account under subclause*
18 *(I)(aa) any remuneration consisting of*
19 *nonqualified deferred compensation, re-*
20 *stricted stock (or restricted stock units),*
21 *stock options, or stock appreciation*
22 *rights payable or granted under a*
23 *written binding contract that was in*
24 *effect on March 1, 2010, and which*

1 *was not modified in any material re-*
2 *spect before such remuneration is paid.*

3 “(V) *ONLY REMUNERATION FOR*
4 *POST-2009 SERVICES COUNTED.—Remu-*
5 *neration shall be taken into account*
6 *under subclause (I)(aa) only to the ex-*
7 *tent attributable to services performed*
8 *by the employee for the plan sponsor*
9 *after December 31, 2009.*

10 “(VI) *COMMISSIONS.—*

11 “(aa) *IN GENERAL.—There*
12 *shall not be taken into account*
13 *under subclause (I)(aa) any re-*
14 *muneration payable on a commis-*
15 *sion basis solely on account of in-*
16 *come directly generated by the in-*
17 *dividual performance of the indi-*
18 *vidual to whom such remunera-*
19 *tion is payable.*

20 “(bb) *SPECIFIED EMPLOY-*
21 *EES.—Item (aa) shall not apply*
22 *in the case of any specified em-*
23 *ployee (within the meaning of sec-*
24 *tion 409A(a)(2)(B)(i) of the Inter-*
25 *nal Revenue Code of 1986) or any*

1 *employee who would be such a*
2 *specified employee if the plan*
3 *sponsor were a corporation de-*
4 *scribed in such section.*

5 “(VII) INDEXING OF AMOUNT.—*In*
6 *the case of any calendar year begin-*
7 *ning after 2010, the dollar amount*
8 *under subclause (I)(aa)(BB) shall be*
9 *increased by an amount equal to—*

10 *“(aa) such dollar amount,*
11 *multiplied by*

12 *“(bb) the cost-of-living ad-*
13 *justment determined under section*
14 *1(f)(3) of the Internal Revenue*
15 *Code of 1986 for the calendar*
16 *year, determined by substituting*
17 *‘calendar year 2009’ for ‘calendar*
18 *year 1992’ in subparagraph (B)*
19 *thereof.*

20 *If the amount of any increase under*
21 *clause (i) is not a multiple of \$20,000,*
22 *such increase shall be rounded to the*
23 *next lowest multiple of \$20,000.*

24 “(v) CERTAIN DIVIDENDS AND RE-
25 DEMPTIONS.—

1 “(I) *IN GENERAL.*—*The dividend*
2 *and redemption amount determined*
3 *under this clause for any plan year is*
4 *the lesser of—*

5 “(aa) *the excess of—*

6 “(AA) *the sum of the*
7 *dividends paid during the*
8 *plan year by the plan spon-*
9 *sor, plus the amounts paid*
10 *for the redemption of stock of*
11 *the plan sponsor redeemed*
12 *during the plan year, over*

13 “(BB) *an amount equal*
14 *to the average of adjusted an-*
15 *nuual net income of the plan*
16 *sponsor for the last 5 fiscal*
17 *years of the plan sponsor*
18 *ending before such plan year,*
19 *or*

20 “(bb) *the sum of—*

21 “(AA) *the amounts paid*
22 *for the redemption of stock of*
23 *the plan sponsor redeemed*
24 *during the plan year, plus*

1 “(BB) the excess of divi-
2 dends paid during the plan
3 year by the plan sponsor over
4 the dividend base amount.

5 “(II) DEFINITIONS.—

6 “(aa) ADJUSTED ANNUAL
7 NET INCOME.—For purposes of
8 subclause (I)(aa)(BB), the term
9 ‘adjusted annual net income’ with
10 respect to any fiscal year means
11 annual net income, determined in
12 accordance with generally accept-
13 ed accounting principles (before
14 after-tax gain or loss on any sale
15 of assets), but without regard to
16 any reduction by reason of depre-
17 ciation or amortization, except
18 that in no event shall adjusted an-
19 nual net income for any fiscal
20 year be less than zero.

21 “(bb) DIVIDEND BASE
22 AMOUNT.—For purposes of this
23 clause, the term ‘dividend base
24 amount’ means, with respect to a

1 *plan year, an amount equal to the*
2 *greater of—*

3 *“(AA) the median of the*
4 *amounts of the dividends*
5 *paid during each of the last*
6 *5 fiscal years of the plan*
7 *sponsor ending before such*
8 *plan year, or*

9 *“(BB) the amount of*
10 *dividends paid during such*
11 *plan year on preferred stock*
12 *that was issued on or before*
13 *May 21, 2010, or that is re-*
14 *placement stock for such pre-*
15 *ferred stock.*

16 *“(III) ONLY CERTAIN POST-2009*
17 *DIVIDENDS AND REDEMPTIONS COUNT-*
18 *ED.—For purposes of subclause (I)*
19 *(other than for purposes of calculating*
20 *the dividend base amount), there shall*
21 *only be taken into account dividends*
22 *declared, and redemptions occurring,*
23 *after February 28, 2010.*

24 *“(IV) EXCEPTION FOR INTRA-*
25 *GROUP DIVIDENDS.—Dividends paid*

1 *by one member of a controlled group*
2 *(as defined in section 302(d)(3)) to an-*
3 *other member of such group shall not*
4 *be taken into account under subclause*
5 *(I).*

6 “(V) *EXCEPTION FOR STOCK DIVI-*
7 *DENDS.—Any distribution by the plan*
8 *sponsor to its shareholders of stock*
9 *issued by the plan sponsor shall not be*
10 *taken into account under subclause (I).*

11 “(VI) *EXCEPTION FOR CERTAIN*
12 *REDEMPTIONS.—The following shall*
13 *not be taken into account under sub-*
14 *clause (I):*

15 “(aa) *Redemptions of securi-*
16 *ties which, at the time of redemp-*
17 *tion, are not listed on an estab-*
18 *lished securities market and—*

19 “(AA) *are made pursu-*
20 *ant to a pension plan that is*
21 *qualified under section 401*
22 *of the Internal Revenue Code*
23 *of 1986 or a shareholder-ap-*
24 *proved program, or*

1 “(BB) are made on ac-
2 count of an employee’s termi-
3 nation of employment with
4 the plan sponsor, or the
5 death or disability of a
6 shareholder.

7 “(bb) Redemptions of securi-
8 ties which are not, immediately
9 after issuance, listed on an estab-
10 lished securities market and are,
11 or had previously been—

12 “(AA) held, directly or
13 indirectly, by, or for the ben-
14 efit of, the Federal Govern-
15 ment or a Federal reserve
16 bank, or

17 “(BB) held by a na-
18 tional government (or a gov-
19 ernment-related entity of
20 such a government) or an
21 employee benefit plan if such
22 shares are substantially iden-
23 tical to shares described in
24 subitem (AA).

1 “(vi) *OTHER DEFINITIONS AND*
2 *RULES.—For purposes of this subpara-*
3 *graph—*

4 “(I) *PLAN SPONSOR.—The term*
5 *‘plan sponsor’ includes any member of*
6 *the plan sponsor’s controlled group (as*
7 *defined in section 302(d)(3)).*

8 “(II) *RESTRICTION PERIOD.—The*
9 *term ‘restriction period’ means, with*
10 *respect to any applicable plan year*
11 *with respect to which an election is*
12 *made under subparagraph (D)—*

13 “(aa) *except as provided in*
14 *item (bb), the 3-year period begin-*
15 *ning with the applicable plan*
16 *year (or, if later, the first plan*
17 *year beginning after December 31,*
18 *2009), or*

19 “(bb) *if the plan sponsor*
20 *elects 15-year amortization for the*
21 *shortfall amortization base for the*
22 *applicable plan year, the 5-year*
23 *period beginning with such plan*
24 *year (or, if later, the first plan*

1 year beginning after December 31,
2 2009).

3 “(III) *ELECTIONS FOR MULTIPLE*
4 *PLANS.*—If a plan sponsor makes elec-
5 tions under subparagraph (D) with re-
6 spect to 2 or more plans, the Secretary
7 of the Treasury shall provide rules for
8 the application of this subparagraph to
9 such plans, including rules for the rat-
10 able allocation of any installment ac-
11 celeration amount among such plans
12 on the basis of each plan’s relative re-
13 duction in the plan’s shortfall amorti-
14 zation installment for the first plan
15 year in the amortization period de-
16 scribed in clause (i) (determined with-
17 out regard to this subparagraph).

18 “(G) *MERGERS AND ACQUISITIONS.*—The
19 Secretary of the Treasury shall prescribe rules
20 for the application of subparagraphs (D) and
21 (F) in any case where there is a merger or ac-
22 quisition involving a plan sponsor making the
23 election under subparagraph (D).

24 “(H) *REGULATIONS AND GUIDANCE.*—The
25 Secretary of the Treasury may prescribe such

1 *regulations and other guidance of general appli-*
2 *cability as such Secretary may determine nec-*
3 *essary to achieve the purposes of subparagraphs*
4 *(D) and (F).”.*

5 (2) *NOTICE REQUIREMENT.*—*Section 204 of such*
6 *Act (29 U.S.C. 1054) is amended—*

7 (A) *by redesignating subsection (k) as sub-*
8 *section (l); and*

9 (B) *by inserting after subsection (j) the fol-*
10 *lowing new subsection:*

11 “(k) *NOTICE IN CONNECTION WITH SHORTFALL AM-*
12 *ORTIZATION ELECTION.*—

13 “(1) *IN GENERAL.*—*Not later 30 days after the*
14 *date of an election under clause (iv) of section*
15 *303(c)(2)(D) in connection with a single-employer*
16 *plan, the plan administrator shall provide notice of*
17 *such election in accordance with this subsection to*
18 *each plan participant and beneficiary, each labor or-*
19 *ganization representing such participants and bene-*
20 *ficiaries, and the Pension Benefit Guaranty Corpora-*
21 *tion.*

22 “(2) *MATTERS INCLUDED IN NOTICE.*—*Each no-*
23 *tice provided pursuant to this subsection shall set*
24 *forth—*

1 “(A) a statement that recently enacted legis-
2 lation permits employers to delay pension fund-
3 ing;

4 “(B) with respect to required contribu-
5 tions—

6 “(i) the amount of contributions that
7 would have been required had the election
8 not been made;

9 “(ii) the amount of the reduction in re-
10 quired contributions for the applicable plan
11 year that occurs on account of the election;
12 and

13 “(iii) the number of plan years to
14 which such reduction will apply;

15 “(C) with respect to a plan’s funding status
16 as of the end of the plan year preceding the ap-
17 plicable plan year—

18 “(i) the liabilities determined under
19 section 4010(d)(1)(A); and

20 “(ii) the market value of assets of the
21 plan; and

22 “(D) with respect to installment accelera-
23 tion amounts (as defined in section
24 303(c)(2)(F)(iii)(I))—

1 “(i) an explanation of section
2 303(c)(2)(F) (relating to increases in short-
3 fall amortization installments in cases of
4 excess compensation or certain dividends or
5 stock redemptions); and

6 “(ii) a statement that increases in re-
7 quired contributions may occur in the event
8 of future payments of excess employee com-
9 pensation or certain share repurchasing or
10 dividend activity and that subsequent no-
11 tices of any such payments or activity will
12 be provided in the annual funding notice
13 provided pursuant to section 101(f).

14 “(3) OTHER REQUIREMENTS.—

15 “(A) FORM.—The notice required by para-
16 graph (1) shall be written in a manner cal-
17 culated to be understood by the average plan
18 participant. The Secretary of the Treasury shall
19 prescribe a model notice that a plan adminis-
20 trator may use to satisfy the requirements of
21 paragraph (1).

22 “(B) PROVISION TO DESIGNATED PER-
23 SONS.—Any notice under paragraph (1) may be
24 provided to a person designated, in writing, by

1 the person to which it would otherwise be pro-
2 vided.

3 “(4) *EFFECT OF EGREGIOUS FAILURE.*—

4 “(A) *IN GENERAL.*—*In the case of any egre-*
5 *gious failure to meet any requirement of this*
6 *subsection with respect to any election, such elec-*
7 *tion shall be treated as having not been made.*

8 “(B) *EGREGIOUS FAILURE.*—*For purposes*
9 *of subparagraph (A), there is an egregious fail-*
10 *ure to meet the requirements of this subsection if*
11 *such failure is in the control of the plan sponsor*
12 *and is—*

13 “(i) *an intentional failure (including*
14 *any failure to promptly provide the re-*
15 *quired notice or information after the plan*
16 *administrator discovers an unintentional*
17 *failure to meet the requirements of this sub-*
18 *section),*

19 “(ii) *a failure to provide most of the*
20 *participants and beneficiaries with most of*
21 *the information they are entitled to receive*
22 *under this subsection, or*

23 “(iii) *a failure which is determined to*
24 *be egregious under regulations prescribed by*
25 *the Secretary of the Treasury.*

1 “(5) *USE OF NEW TECHNOLOGIES.*—*The Sec-*
2 *retary of the Treasury may, in consultation with the*
3 *Secretary, by regulations or other guidance of general*
4 *applicability, allow any notice under this subsection*
5 *to be provided using new technologies.”.*

6 (C) *SUBSEQUENT SUPPLEMENTAL NO-*
7 *TICES.*—*Section 101(f)(2)(C) of such Act (29*
8 *U.S.C. 1021(f)(2)(C)) is amended—*

9 *(i) by striking “and” at the end of*
10 *clause (i);*

11 *(ii) by redesignating clause (ii) as*
12 *clause (iii); and*

13 *(iii) by inserting after clause (i) the*
14 *following new clause:*

15 “*(ii) any excess employee compensation*
16 *amounts and any dividends and redemp-*
17 *tions amounts determined under section*
18 *303(c)(2)(F) for the preceding plan year*
19 *with respect to the plan, and”.*

20 (3) *DISREGARD OF INSTALLMENT ACCELERATION*
21 *AMOUNTS IN DETERMINING QUARTERLY CONTRIBU-*
22 *TIONS.*—*Section 303(j)(3) of such Act (29 U.S.C.*
23 *1083(j)(3)) is amended by adding at the end the fol-*
24 *lowing new subparagraph:*

1 “(F) *DISREGARD OF INSTALLMENT ACCEL-*
2 *ERATION AMOUNTS.*—Subparagraph (D) shall be
3 *applied without regard to any increase under*
4 *subsection (c)(2)(F).”.*

5 (4) *CONFORMING AMENDMENT.*—Section
6 303(c)(1) of such Act (29 U.S.C. 1083(c)(1)) is
7 amended by striking “the shortfall amortization bases
8 for such plan year and each of the 6 preceding plan
9 years” and inserting “any shortfall amortization base
10 which has not been fully amortized under this sub-
11 section”.

12 (b) *IRC AMENDMENTS.*—

13 (1) *IN GENERAL.*—Section 430(c)(2) of the *Inter-*
14 *nal Revenue Code of 1986* is amended by adding at
15 the end the following subparagraphs:

16 “(D) *SPECIAL RULE.*—

17 “(i) *IN GENERAL.*—In the case of the
18 *shortfall amortization base of a plan for*
19 *any applicable plan year, the shortfall am-*
20 *ortization installments are the amounts de-*
21 *scribed in clause (ii) or (iii), if made appli-*
22 *cable by an election under clause (iv). In*
23 *the absence of a timely election, such in-*
24 *stallments shall be determined without re-*
25 *gard to this subparagraph.*

1 “(ii) *2 PLUS 7 AMORTIZATION SCHED-*
2 *ULE.—The shortfall amortization install-*
3 *ments described in this clause are—*

4 “(I) *in the case of the first 2 plan*
5 *years in the 9-plan-year period begin-*
6 *ning with the applicable plan year, in-*
7 *terest on the shortfall amortization*
8 *base (determined by using the effective*
9 *interest rate for the applicable plan*
10 *year), and*

11 “(II) *in the case of the last 7 plan*
12 *years in such 9-plan-year period, the*
13 *amounts necessary to amortize the bal-*
14 *ance of such shortfall amortization*
15 *base in level annual installments over*
16 *such last 7 plan years (determined*
17 *using the segment rates determined*
18 *under subparagraph (C) of subsection*
19 *(h)(2) for the applicable plan year, ap-*
20 *plied under rules similar to the rules of*
21 *subparagraph (B) of subsection (h)(2)).*

22 “(iii) *15-YEAR AMORTIZATION.—The*
23 *shortfall amortization installments de-*
24 *scribed in this clause are the amounts under*
25 *subparagraphs (A) and (B) determined by*

1 *substituting ‘15 plan-year period’ for ‘7-*
2 *plan-year period’.*

3 “(iv) *ELECTION.—*

4 “(I) *IN GENERAL.—The plan*
5 *sponsor may, with respect to a plan,*
6 *elect, with respect to any of not more*
7 *than 2 applicable plan years, to deter-*
8 *mine shortfall amortization install-*
9 *ments under this subparagraph. An*
10 *election under either clause (ii) or*
11 *clause (iii) may be made with respect*
12 *to either of such applicable plan years.*

13 “(II) *ELIGIBILITY FOR ELEC-*
14 *TION.—An election may be made to de-*
15 *termine shortfall amortization install-*
16 *ments under this subparagraph with*
17 *respect to a plan only if, as of the date*
18 *of the election—*

19 “(aa) *the plan sponsor is not*
20 *a debtor in a case under title 11,*
21 *United States Code, or similar*
22 *Federal or State law,*

23 “(bb) *there are no unpaid*
24 *minimum required contributions*

1 with respect to the plan for pur-
2 poses of section 4971,

3 “(cc) there is no lien in favor
4 of the plan under subsection (k) or
5 under section 303(k) of the Em-
6 ployee Retirement Income Secu-
7 rity Act of 1974, and

8 “(dd) a distress termination
9 has not been initiated for the plan
10 under section 4041(c) of such Act.

11 “(III) RULES RELATING TO ELEC-
12 TION.—Such election shall be made at
13 such times, and in such form and
14 manner, as shall be prescribed by the
15 Secretary and shall be irrevocable, ex-
16 cept under such limited circumstances,
17 and subject to such conditions, as the
18 Secretary may prescribe.

19 “(E) APPLICABLE PLAN YEAR.—

20 “(i) IN GENERAL.—For purposes of
21 this paragraph, the term ‘applicable plan
22 year’ means, subject to the election of the
23 plan sponsor under subparagraph (D)(iv),
24 each of not more than 2 of the plan years
25 beginning in 2008, 2009, 2010, or 2011.

1 “(i) *SPECIAL RULE RELATING TO*
2 *2008.—A plan year may be elected as an ap-*
3 *licable plan year pursuant to this sub-*
4 *paragraph only if the due date under sub-*
5 *section (j)(1) for the payment of the min-*
6 *imum required contribution for such plan*
7 *year occurs on or after March 10, 2010.*

8 “(F) *INCREASES IN SHORTFALL AMORTIZA-*
9 *TION INSTALLMENTS IN CASES OF EXCESS COM-*
10 *PENSATION OR CERTAIN DIVIDENDS OR STOCK*
11 *REDEMPTIONS.—*

12 “(i) *IN GENERAL.—If, with respect to*
13 *an election for an applicable plan year*
14 *under subparagraph (D), there is an in-*
15 *stallment acceleration amount with respect*
16 *to a plan for any plan year in the restric-*
17 *tion period (or if there is an installment ac-*
18 *celeration amount carried forward to a*
19 *plan year not in the restriction period),*
20 *then the shortfall amortization installment*
21 *otherwise determined and payable under*
22 *this paragraph for such plan year shall be*
23 *increased by such amount.*

24 “(ii) *BACK-END ADJUSTMENT TO AM-*
25 *ORTIZATION SCHEDULE.—Subject to rules*

1 *prescribed by the Secretary, if a shortfall*
2 *amortization installment with respect to*
3 *any shortfall amortization base for an ap-*
4 *plicable plan year is required to be in-*
5 *creased for any plan year under clause (i),*
6 *subsequent shortfall amortization install-*
7 *ments with respect to such base shall be re-*
8 *duced, in reverse order of the otherwise re-*
9 *quired installments beginning with the final*
10 *scheduled installment, to the extent nec-*
11 *essary to limit the present value of such*
12 *subsequent shortfall amortization install-*
13 *ments (after application of this subpara-*
14 *graph) to the present value of the remaining*
15 *unamortized shortfall amortization base.*

16 “(iii) *INSTALLMENT ACCELERATION*
17 *AMOUNT.—For purposes of this subpara-*
18 *graph—*

19 “(I) *IN GENERAL.—The term ‘in-*
20 *stallment acceleration amount’ means,*
21 *with respect to any plan year in a re-*
22 *striction period with respect to an ap-*
23 *plicable plan year, the sum of—*

24 “(aa) *the aggregate amount*
25 *of excess employee compensation*

1 *determined under clause (iv) for*
2 *the plan year, plus*

3 *“(bb) the dividend and re-*
4 *demption amount determined*
5 *under clause (v) for the plan year.*

6 *“(II) CUMULATIVE LIMITATION.—*
7 *The installment acceleration amount*
8 *for any plan year shall not exceed the*
9 *excess (if any) of—*

10 *“(aa) the sum of the shortfall*
11 *amortization installments for the*
12 *plan year and all preceding plan*
13 *years in the amortization period*
14 *elected under subparagraph (D)*
15 *with respect to the shortfall amor-*
16 *tization base with respect to an*
17 *applicable year, determined with-*
18 *out regard to subparagraph (D)*
19 *and this subparagraph, over*

20 *“(bb) the sum of the shortfall*
21 *amortization installments for such*
22 *plan year and all such preceding*
23 *plan years, determined after ap-*
24 *plication of subparagraph (D)*
25 *(and in the case of any preceding*

1 *plan year, after application of*
2 *this subparagraph).*

3 “(III) *CARRYOVER OF EXCESS IN-*
4 *STALLMENT* *ACCELERATION*
5 *AMOUNTS.—*

6 “(aa) *IN GENERAL.—If the*
7 *installment acceleration amount*
8 *for any plan year (determined*
9 *without regard to subclause (II))*
10 *exceeds the limitation under sub-*
11 *clause (II), then, subject to item*
12 *(bb), such excess shall be treated*
13 *as an installment acceleration*
14 *amount for the succeeding plan*
15 *year.*

16 “(bb) *CAP TO APPLY.—If any*
17 *amount treated as an installment*
18 *acceleration amount under item*
19 *(aa) or this item with respect any*
20 *succeeding plan year, when added*
21 *to other installment acceleration*
22 *amounts (determined without re-*
23 *gard to subclause (II)) with re-*
24 *spect to the plan year, exceeds the*
25 *limitation under subclause (II),*

1 *the portion of such amount rep-*
2 *resenting such excess shall be*
3 *treated as an installment accelera-*
4 *tion amount with respect to the*
5 *next succeeding plan year.*

6 *“(cc) LIMITATION ON YEARS*
7 *TO WHICH AMOUNTS CARRIED*
8 *FORWARD.—No amount shall be*
9 *carried forward under item (aa)*
10 *or (bb) to a plan year which be-*
11 *gins after the last plan year in*
12 *the restriction period (or after the*
13 *second plan year following such*
14 *last plan year in the case of an*
15 *election year with respect to which*
16 *15-year amortization was elected*
17 *under subparagraph (D)(iii)).*

18 *“(dd) ORDERING RULES.—*
19 *For purposes of applying item*
20 *(bb), installment acceleration*
21 *amounts for the plan year (deter-*
22 *mined without regard to any car-*
23 *ryover under this clause) shall be*
24 *applied first against the limita-*
25 *tion under subclause (II) and then*

1 *carryovers to such plan year shall*
2 *be applied against such limitation*
3 *on a first-in, first-out basis.*

4 “(iv) *EXCESS EMPLOYEE COMPENSA-*
5 *TION.—*

6 “(I) *IN GENERAL.—For purposes*
7 *of this paragraph, the term ‘excess em-*
8 *ployee compensation’ means the sum*
9 *of—*

10 “(aa) *with respect to any*
11 *employee, for any plan year, the*
12 *excess (if any) of—*

13 “(AA) *the aggregate*
14 *amount includible in income*
15 *under chapter 1 for remun-*
16 *eration during the calendar*
17 *year in which such plan year*
18 *begins for services performed*
19 *by the employee for the plan*
20 *sponsor (whether or not per-*
21 *formed during such calendar*
22 *year), over*

23 “(BB) *\$1,000,000, plus*

24 “(bb) *the amount of assets set*
25 *aside or reserved (directly or indi-*

1 rectly) in a trust (or other ar-
2 rangement as determined by the
3 Secretary), or transferred to such
4 a trust or other arrangement, dur-
5 ing the calendar year by a plan
6 sponsor for purposes of paying de-
7 ferred compensation of an em-
8 ployee under a nonqualified de-
9 ferred compensation plan (as de-
10 fined in section 409A) of the plan
11 sponsor.

12 “(II) NO DOUBLE COUNTING.—No
13 amount shall be taken into account
14 under subclause (I) more than once.

15 “(III) EMPLOYEE; REMUNERA-
16 TION.—For purposes of this clause, the
17 term ‘employee’ includes, with respect
18 to a calendar year, a self-employed in-
19 dividual who is treated as an employee
20 under section 401(c) for the taxable
21 year ending during such calendar
22 year, and the term ‘remuneration’
23 shall include earned income of such an
24 individual.

1 “(IV) *CERTAIN PAYMENTS UNDER*
2 *EXISTING CONTRACTS.*—*There shall not*
3 *be taken into account under subclause*
4 *(I) any remuneration consisting of*
5 *nonqualified deferred compensation, re-*
6 *stricted stock (or restricted stock units),*
7 *stock options, or stock appreciation*
8 *rights payable or granted under a*
9 *written binding contract that was in*
10 *effect on March 1, 2010, and which*
11 *was not modified in any material re-*
12 *spect before such remuneration is paid.*

13 “(V) *ONLY REMUNERATION FOR*
14 *POST-2009 SERVICES COUNTED.*—*Remu-*
15 *neration shall be taken into account*
16 *under subclause (I)(aa) only to the ex-*
17 *tent attributable to services performed*
18 *by the employee for the plan sponsor*
19 *after December 31, 2009.*

20 “(VI) *COMMISSIONS.*—

21 “(aa) *IN GENERAL.*—*There*
22 *shall not be taken into account*
23 *under subclause (I)(aa) any re-*
24 *muneration payable on a commis-*
25 *sion basis solely on account of in-*

1 *come directly generated by the in-*
2 *dividual performance of the indi-*
3 *vidual to whom such remunera-*
4 *tion is payable.*

5 “(bb) *SPECIFIED EMPLOY-*
6 *EES.—Item (aa) shall not apply*
7 *in the case of any specified em-*
8 *ployee (within the meaning of sec-*
9 *tion 409A(a)(2)(B)(i)) or any em-*
10 *ployee who would be such a speci-*
11 *fied employee if the plan sponsor*
12 *were a corporation described in*
13 *such section.*

14 “(VII) *INDEXING OF AMOUNT.—In*
15 *the case of any calendar year begin-*
16 *ning after 2010, the dollar amount*
17 *under subclause (I)(aa)(BB) shall be*
18 *increased by an amount equal to—*

19 “(aa) *such dollar amount,*
20 *multiplied by*

21 “(bb) *the cost-of-living ad-*
22 *justment determined under section*
23 *1(f)(3) for the calendar year, de-*
24 *termined by substituting ‘calendar*
25 *year 2009’ for ‘calendar year*

1 1992' in subparagraph (B) there-
2 of.

3 If the amount of any increase under
4 clause (i) is not a multiple of \$20,000,
5 such increase shall be rounded to the
6 next lowest multiple of \$20,000.

7 “(v) CERTAIN DIVIDENDS AND RE-
8 DEMPTIONS.—

9 “(I) IN GENERAL.—The dividend
10 and redemption amount determined
11 under this clause for any plan year is
12 the lesser of—

13 “(aa) the excess of—

14 “(AA) the sum of the
15 dividends paid during the
16 plan year by the plan spon-
17 sor, plus the amounts paid
18 for the redemption of stock of
19 the plan sponsor redeemed
20 during the plan year, over

21 “(BB) an amount equal
22 to the average of adjusted an-
23 nual net income of the plan
24 sponsor for the last 5 fiscal
25 years of the plan sponsor

1 ending before such plan year,

2 or

3 “(bb) the sum of—

4 “(AA) the amounts paid

5 for the redemption of stock of

6 the plan sponsor redeemed

7 during the plan year, plus

8 “(BB) the excess of divi-

9 dends paid during the plan

10 year by the plan sponsor over

11 the dividend base amount.

12 “(II) DEFINITIONS.—

13 “(aa) ADJUSTED ANNUAL

14 NET INCOME.—For purposes of

15 subclause (I)(aa)(BB), the term

16 ‘adjusted annual net income’ with

17 respect to any fiscal year means

18 annual net income, determined in

19 accordance with generally accept-

20 ed accounting principles (before

21 after-tax gain or loss on any sale

22 of assets), but without regard to

23 any reduction by reason of depre-

24 ciation or amortization, except

25 that in no event shall adjusted an-

1 *nual net income for any fiscal*
2 *year be less than zero.*

3 “(bb) *DIVIDEND BASE*
4 *AMOUNT.—For purposes of this*
5 *clause, the term ‘dividend base*
6 *amount’ means, with respect to a*
7 *plan year, an amount equal to the*
8 *greater of—*

9 “(AA) *the median of the*
10 *amounts of the dividends*
11 *paid during each of the last*
12 *5 fiscal years of the plan*
13 *sponsor ending before such*
14 *plan year, or*

15 “(BB) *the amount of*
16 *dividends paid during such*
17 *plan year on preferred stock*
18 *that was issued on or before*
19 *May 21, 2010, or that is re-*
20 *placement stock for such pre-*
21 *ferred stock.*

22 “(III) *ONLY CERTAIN POST-2009*
23 *DIVIDENDS AND REDEMPTIONS COUNT-*
24 *ED.—For purposes of subclause (I)*
25 *(other than for purposes of calculating*

1 *the dividend base amount), there shall*
2 *only be taken into account dividends*
3 *declared, and redemptions occurring,*
4 *after February 28, 2010.*

5 “(IV) *EXCEPTION FOR INTRA-*
6 *GROUP DIVIDENDS.—Dividends paid*
7 *by one member of a controlled group*
8 *(as defined in section 412(d)(3)) to an-*
9 *other member of such group shall not*
10 *be taken into account under subclause*
11 *(I).*

12 “(V) *EXCEPTION FOR STOCK DIVI-*
13 *DENDS.—Any distribution by the plan*
14 *sponsor to its shareholders of stock*
15 *issued by the plan sponsor shall not be*
16 *taken into account under subclause (I).*

17 “(VI) *EXCEPTION FOR CERTAIN*
18 *REDEMPTIONS.—The following shall*
19 *not be taken into account under sub-*
20 *clause (I):*

21 “(aa) *Redemptions of securi-*
22 *ties which, at the time of redemp-*
23 *tion, are not listed on an estab-*
24 *lished securities market and—*

1 “(AA) are made pursu-
2 ant to a pension plan that is
3 qualified under section 401
4 or a shareholder-approved
5 program, or

6 “(BB) are made on ac-
7 count of an employee’s termi-
8 nation of employment with
9 the plan sponsor, or the
10 death or disability of a
11 shareholder.

12 “(bb) Redemptions of securi-
13 ties which are not, immediately
14 after issuance, listed on an estab-
15 lished securities market and are,
16 or had previously been—

17 “(AA) held, directly or
18 indirectly, by, or for the ben-
19 efit of, the Federal Govern-
20 ment or a Federal reserve
21 bank, or

22 “(BB) held by a na-
23 tional government (or a gov-
24 ernment-related entity of
25 such a government) or an

1 *employee benefit plan if such*
2 *shares are substantially iden-*
3 *tical to shares described in*
4 *subitem (AA).*

5 “(vi) *OTHER DEFINITIONS AND*
6 *RULES.—For purposes of this subpara-*
7 *graph—*

8 “(I) *PLAN SPONSOR.—The term*
9 *‘plan sponsor’ includes any group of*
10 *which the plan sponsor is a member*
11 *and which is treated as a single em-*
12 *ployer under subsection (b), (c), (m),*
13 *or (o) of section 414.*

14 “(II) *RESTRICTION PERIOD.—The*
15 *term ‘restriction period’ means, with*
16 *respect to any applicable plan year*
17 *with respect to which an election is*
18 *made under subparagraph (D)—*

19 “(aa) *except as provided in*
20 *item (bb), the 3-year period begin-*
21 *ning with the applicable plan*
22 *year (or, if later, the first plan*
23 *year beginning after December 31,*
24 *2009), or*

1 “(bb) if the plan sponsor
2 elects 15-year amortization for the
3 shortfall amortization base for the
4 applicable plan year, the 5-year
5 period beginning with such plan
6 year (or, if later, the first plan
7 year beginning after December 31,
8 2009).

9 “(III) *ELECTIONS FOR MULTIPLE*
10 *PLANS.*—If a plan sponsor makes elec-
11 tions under subparagraph (D) with re-
12 spect to 2 or more plans, the Secretary
13 shall provide rules for the application
14 of this subparagraph to such plans, in-
15 cluding rules for the ratable allocation
16 of any installment acceleration amount
17 among such plans on the basis of each
18 plan’s relative reduction in the plan’s
19 shortfall amortization installment for
20 the first plan year in the amortization
21 period described in clause (i) (deter-
22 mined without regard to this subpara-
23 graph).

24 “(G) *MERGERS AND ACQUISITIONS.*—The
25 Secretary shall prescribe rules for the applica-

1 tion of subparagraphs (D) and (F) in any case
2 where there is a merger or acquisition involving
3 a plan sponsor making the election under sub-
4 paragraph (D).

5 “(H) REGULATIONS AND GUIDANCE.—The
6 Secretary may prescribe such regulations and
7 other guidance of general applicability as the
8 Secretary may determine necessary to achieve
9 the purposes of subparagraphs (D) and (F).”.

10 (2) NOTICE REQUIREMENT.—

11 (A) IN GENERAL.—Section 4980F of such
12 Code is amended—

13 (i) by striking “subsection (e)” each
14 place it appears in subsection (a) and para-
15 graphs (1) and (3) of subsection (c) and in-
16 serting “subsections (e) and (f)”;

17 (ii) by striking “subsection (e)” in sub-
18 section (c)(2)(A) and inserting “subsection
19 (e), (f), or both, as the case may be”; and

20 (iii) by redesignating subsection (f) as
21 subsection (g) and by inserting after sub-
22 section (e) the following new subsection:

23 “(f) NOTICE IN CONNECTION WITH SHORTFALL AMOR-

24 TIZATION ELECTION.—

1 “(1) *IN GENERAL.*—Not later 30 days after the
2 date of an election under clause (iv) of section
3 430(c)(2)(D) in connection with a plan, the plan ad-
4 ministrators shall provide notice of such election in ac-
5 cordance with this subsection to each plan partici-
6 pant and beneficiary, each labor organization rep-
7 resenting such participants and beneficiaries, and the
8 Pension Benefit Guaranty Corporation.

9 “(2) *MATTERS INCLUDED IN NOTICE.*—Each no-
10 tice provided pursuant to this subsection shall set
11 forth—

12 “(A) a statement that recently enacted legis-
13 lation permits employers to delay pension fund-
14 ing;

15 “(B) with respect to required contribu-
16 tions—

17 “(i) the amount of contributions that
18 would have been required had the election
19 not been made;

20 “(ii) the amount of the reduction in re-
21 quired contributions for the applicable plan
22 year that occurs on account of the election;
23 and

24 “(iii) the number of plan years to
25 which such reduction will apply;

1 “(C) with respect to a plan’s funding status
2 as of the end of the plan year preceding the ap-
3 plicable plan year—

4 “(i) the liabilities determined under
5 section 4010(d)(1)(A) of the Employee Re-
6 tirement Income Security Act of 1974; and

7 “(ii) the market value of assets of the
8 plan; and

9 “(D) with respect to installment accelera-
10 tion amounts (as defined in section
11 430(c)(2)(F)(iii)(I))—

12 “(i) an explanation of section
13 430(c)(2)(F) (relating to increases in short-
14 fall amortization installments in cases of
15 excess compensation or certain dividends or
16 stock redemptions); and

17 “(ii) a statement that increases in re-
18 quired contributions may occur in the event
19 of future payments of excess employee com-
20 pensation or certain share repurchasing or
21 dividend activity and that subsequent no-
22 tices of any such payments or activity will
23 be provided in the annual funding notice
24 provided pursuant to section 101(f) of the

1 *Employee Retirement Income Security Act*
2 *of 1974.*

3 “(3) *OTHER REQUIREMENTS.—*

4 “(A) *FORM.—The notice required by para-*
5 *graph (1) shall be written in a manner cal-*
6 *culated to be understood by the average plan*
7 *participant and shall provide sufficient informa-*
8 *tion (as determined in accordance with regula-*
9 *tions or other guidance of general applicability*
10 *prescribed by the Secretary) to allow plan par-*
11 *ticipants and beneficiaries to understand the ef-*
12 *fect of the election. The Secretary shall prescribe*
13 *a model notice that a plan administrator may*
14 *use to satisfy the requirements of paragraph (1).*

15 “(B) *PROVISION TO DESIGNATED PER-*
16 *SONS.—Any notice under paragraph (1) may be*
17 *provided to a person designated, in writing, by*
18 *the person to which it would otherwise be pro-*
19 *vided.”.*

20 “(B) *CONFORMING AMENDMENT.—Subsection*
21 *(g) of section 4980F of such Code is amended by*
22 *inserting “or (f)” after “subsection (e)”.*

23 “(3) *DISREGARD OF INSTALLMENT ACCELERATION*
24 *AMOUNTS IN DETERMINING QUARTERLY CONTRIBU-*

1 *TIONS.—Section 430(j)(3) of such Code is amended by*
 2 *adding at the end the following new subparagraph:*

3 *“(F) DISREGARD OF INSTALLMENT ACCEL-*
 4 *ERATION AMOUNTS.—Subparagraph (D) shall be*
 5 *applied without regard to any increase under*
 6 *subsection (c)(2)(F).”.*

7 *(4) CONFORMING AMENDMENT.—Paragraph (1)*
 8 *of section 430(c) of such Code is amended by striking*
 9 *“the shortfall amortization bases for such plan year*
 10 *and each of the 6 preceding plan years” and inserting*
 11 *“any shortfall amortization base which has not been*
 12 *fully amortized under this subsection”.*

13 *(c) EFFECTIVE DATE.—The amendments made by this*
 14 *section shall apply to plan years beginning after December*
 15 *31, 2007.*

16 **SEC. 302. APPLICATION OF EXTENDED AMORTIZATION PE-**
 17 **RIOD TO PLANS SUBJECT TO PRIOR LAW**
 18 **FUNDING RULES.**

19 *(a) IN GENERAL.—Title I of the Pension Protection*
 20 *Act of 2006 is amended by redesignating section 107 as sec-*
 21 *tion 108 and by inserting the following after section 106:*

22 **“SEC. 107. APPLICATION OF FUNDING RELIEF TO PLANS**
 23 **WITH DELAYED EFFECTIVE DATE.**

24 *“(a) ALTERNATIVE ELECTIONS.—*

1 “(1) *IN GENERAL.*—Subject to this section, a
2 plan sponsor of a plan to which section 104, 105, or
3 106 of this Act applies may either elect the applica-
4 tion of subsection (b) with respect to the plan for not
5 more than 2 applicable plan years or elect the appli-
6 cation of subsection (c) with respect to the plan for
7 1 applicable plan year.

8 “(2) *ELIGIBILITY FOR ELECTIONS.*—An election
9 may be made by a plan sponsor under paragraph (1)
10 with respect to a plan only if at the time of the elec-
11 tion—

12 “(A) the plan sponsor is not a debtor in a
13 case under title 11, United States Code, or simi-
14 lar Federal or State law,

15 “(B) there are no accumulated funding defi-
16 ciencies (as defined in section 302(a)(2) of the
17 Employee Retirement Income Security Act of
18 1974 (as in effect immediately before the enact-
19 ment of this Act) or in section 412(a) of the In-
20 ternal Revenue Code of 1986 (as so in effect))
21 with respect to the plan,

22 “(C) there is no lien in favor of the plan
23 under section 302(d) (as so in effect) or under
24 section 412(n) of such Code (as so in effect), and

1 “(D) a distress termination has not been
2 initiated for the plan under section 4041(c) of
3 the Employee Retirement Income Security Act of
4 1974.

5 “(b) ALTERNATIVE ADDITIONAL FUNDING CHARGE.—
6 If the plan sponsor elects the application of this subsection
7 with respect to the plan, for purposes of applying section
8 302(d) of the Employee Retirement Income Security Act of
9 1974 (as in effect before the amendments made by this sub-
10 title and subtitle B) and section 412(l) of the Internal Rev-
11 enue Code of 1986 (as so in effect)—

12 “(1) the deficit reduction contribution under
13 paragraph (2) of such section 302(d) and paragraph
14 (2) of such section 412(l) for such plan for any appli-
15 cable plan year, shall be zero, and

16 “(2) the additional funding charge under para-
17 graph (1) of such section 302(d) and paragraph (1)
18 of such section 412(l) for such plan for any applicable
19 plan year shall be increased by an amount equal to
20 the installment acceleration amount (as defined in
21 sections 303(c)(2)(F)(iii)(I) of such Act (as amended
22 by the American Jobs and Closing Tax Loopholes Act
23 of 2010) and 430(c)(2)(F)(iii)(I) of such Code (as so
24 amended)) with respect to the plan sponsor for such
25 plan year, determined by treating the later of such

1 *plan year or the first plan year beginning after De-*
2 *cember 31, 2009, as the restriction period.*

3 “(c) *APPLICATION OF 15-YEAR AMORTIZATION.*—*If the*
4 *plan sponsor elects the application of this subsection with*
5 *respect to the plan, for purposes of applying section 302(d)*
6 *of such Act (as in effect before the amendments made by*
7 *this subtitle and subtitle B) and section 412(l) of such Code*
8 *(as so in effect)—*

9 “(1) *in the case of the increased unfunded new*
10 *liability of the plan, the applicable percentage de-*
11 *scribed in paragraph (4)(C) of such section 302(d)*
12 *and paragraph (4)(C) of such section 412(l) for any*
13 *pre-effective date plan year beginning with or after*
14 *the applicable plan year shall be the ratio of—*

15 “(A) *the annual installments payable in*
16 *each plan year if the increased unfunded new li-*
17 *ability for such plan year were amortized in*
18 *equal installments over the period beginning*
19 *with such plan year and ending with the last*
20 *plan year in the period of 15 plan years begin-*
21 *ning with the applicable plan year, using an in-*
22 *terest rate equal to the third segment rate de-*
23 *scribed in sections 104(b), 105(b), and 106(b) of*
24 *this Act, to*

1 “(B) *the increased unfunded new liability*
2 *for such plan year,*

3 “(2) *in the case of the excess of the unfunded new*
4 *liability over the increased unfunded new liability,*
5 *such applicable percentage shall be determined with-*
6 *out regard to this section, and*

7 “(3) *the additional funding charge with respect*
8 *to the plan for a plan year shall be increased by an*
9 *amount equal to the installment acceleration amount*
10 *(as defined in section 303(c)(2)(F)(iii) of such Act (as*
11 *amended by the American Jobs and Closing Tax*
12 *Loopholes Act of 2010 and section 430(c)(2)(F)(iii) of*
13 *such Code (as so amended)) with respect to the plan*
14 *sponsor for such plan year, determined without re-*
15 *gard to subclause (II) of such sections*
16 *303(c)(2)(F)(iii) and 430(c)(2)(F)(iii).*

17 “(d) *DEFINITIONS AND SPECIAL RULES.—For pur-*
18 *poses of this section—*

19 “(1) *APPLICABLE PLAN YEAR.—*

20 “(A) *IN GENERAL.—The term ‘applicable*
21 *plan year’ with respect to a plan means, subject*
22 *to the election of the plan sponsor under sub-*
23 *section (a), a plan year beginning in 2009, 2010,*
24 *or 2011.*

25 “(B) *ELECTION.—*

1 “(i) *IN GENERAL.*—*The election de-*
2 *scribed in subsection (a) shall be made at*
3 *such times, and in such form and manner,*
4 *as shall be prescribed by the Secretary of the*
5 *Treasury.*

6 “(ii) *REDUCTION IN YEARS WHICH MAY*
7 *BE ELECTED.*—*The number of applicable*
8 *plan years for which an election may be*
9 *made under section 303(c)(2)(D) of the Em-*
10 *ployee Retirement Income Security Act of*
11 *1974 (as amended by the American Jobs*
12 *and Closing Tax Loopholes Act of 2010) or*
13 *section 430(c)(2)(D) of the Internal Revenue*
14 *Code of 1986 (as so amended) shall be re-*
15 *duced by the number of applicable plan*
16 *years for which an election under this sec-*
17 *tion is made.*

18 “(C) *ALLOCATION OF INSTALLMENT ACCEL-*
19 *ERATION AMOUNT FOR MULTIPLE PLAN ELEC-*
20 *TION.*—*In the case of an election under this sec-*
21 *tion with respect to 2 or more plans by the same*
22 *plan sponsor, the installment acceleration*
23 *amount shall be apportioned ratably with respect*
24 *to such plans in proportion to the deficit reduc-*

1 *tion contributions of the plans determined with-*
2 *out regard to subsection (b)(1).*

3 “(2) *PLAN SPONSOR.*—*The term ‘plan sponsor’*
4 *shall have the meaning provided such term in section*
5 *303(c)(2)(F)(vi)(I) of the Employee Retirement In-*
6 *come Security Act of 1974 (as amended by the Amer-*
7 *ican Jobs and Closing Tax Loopholes Act of 2010)*
8 *and section 430(c)(2)(F)(vi)(I) of the Internal Rev-*
9 *enue Code of 1986 (as so amended).*

10 “(3) *PRE-EFFECTIVE DATE PLAN YEAR.*—*The*
11 *term ‘pre-effective date plan year’ means, with respect*
12 *to a plan, any plan year prior to the first year in*
13 *which the amendments made by this subtitle and sub-*
14 *title B apply to the plan.*

15 “(4) *INCREASED UNFUNDED NEW LIABILITY.*—
16 *The term ‘increased unfunded new liability’ means,*
17 *with respect to a year, the excess (if any) of the un-*
18 *funded new liability over the amount of unfunded*
19 *new liability determined as if the value of the plan’s*
20 *assets determined under subsection 302(c)(2) of such*
21 *Act (as in effect before the amendments made by this*
22 *subtitle and subtitle B) and section 412(c)(2) of such*
23 *Code (as so in effect) equaled the product of the cur-*
24 *rent liability of the plan for the year multiplied by*
25 *the funded current liability percentage (as defined in*

1 *section 302(d)(8)(B) of such Act (as so in effect) and*
2 *412(l)(8)(B) of such Code (as so in effect)) of the plan*
3 *for the second plan year preceding the first applicable*
4 *plan year of such plan for which an election under*
5 *this section is made.*

6 “(5) *OTHER DEFINITIONS.*—*The terms ‘unfunded*
7 *new liability’ and ‘current liability’ shall have the*
8 *meanings set forth in section 302(d) of such Act (as*
9 *so in effect) and section 412(l) of such Code (as so in*
10 *effect).*

11 “(6) *ADDITIONAL FUNDING CHARGE INCREASE*
12 *NOT TO EXCEED RELIEF.*—

13 “(A) *ELECTION UNDER SUBSECTION (B).*—
14 *In the case of an election under subsection (b),*
15 *an increase resulting from the application of*
16 *subsection (b)(2) in the additional funding*
17 *charge with respect to a plan for a plan year*
18 *shall not exceed the excess (if any) of—*

19 “(i) *the deficit reduction contribution*
20 *under section 302(d)(2) of such Act (as so*
21 *in effect) and section 412(l)(2) of such Code*
22 *(as so in effect) for such plan year, deter-*
23 *mined as if the election had not been made,*
24 *over*

1 “(i) the deficit reduction contribution
2 under such sections for such plan (deter-
3 mined without regard to any increase under
4 subsection (b)(2)).

5 “(B) ELECTION UNDER SUBSECTION (C).—
6 An increase resulting from the application of
7 subsection (c)(3) in the additional funding
8 charge with respect to a plan for a plan year
9 shall not exceed the excess (if any) of—

10 “(i) the sum of the deficit reduction
11 contributions under section 302(d)(2) of
12 such Act (as so in effect) and section
13 412(l)(2) of such Code (as so in effect) for
14 such plan for such plan year and for all
15 preceding plan years beginning with or
16 after the applicable plan year, determined
17 as if the election had not been made, over

18 “(ii) the sum of the deficit reduction
19 contributions under such sections for such
20 plan years (determined without regard to
21 any increase under subsection (c)(3)).

22 “(e) NOTICE.—Not later 30 days after the date of an
23 election under subsection (a) in connection with a plan, the
24 plan administrator shall provide notice pursuant to, and
25 subject to, rules similar to the rules of sections 204(k) of

1 *the Employee Retirement Income Security Act of 1974 (as*
2 *amended by the American Jobs and Closing Tax Loopholes*
3 *Act of 2010) and 4980F(f) of the Internal Revenue Code*
4 *of 1986 (as so amended).”.*

5 (b) *ELIGIBLE CHARITY PLANS.—Section 104 of such*
6 *Act is amended—*

7 (1) *by striking “eligible cooperative plan” wher-*
8 *ever it appears in subsections (a) and (b) and insert-*
9 *ing “eligible cooperative plan or an eligible charity*
10 *plan”; and*

11 (2) *by adding at the end the following new sub-*
12 *section:*

13 “(d) *ELIGIBLE CHARITY PLAN DEFINED.—For pur-*
14 *poses of this section, a plan shall be treated as an eligible*
15 *charity plan for a plan year if—*

16 “(1) *the plan is maintained by one or more em-*
17 *ployers employing employees who are accruing bene-*
18 *fits based on service for the plan year,*

19 “(2) *such employees are employed in at least 20*
20 *States,*

21 “(3) *each such employee (other than a de mini-*
22 *mis number of employees) is employed by an em-*
23 *ployer described in section 501(c)(3) of such Code and*
24 *the primary exempt purpose of each such employer is*
25 *to provide services with respect to children, and*

1 “(4) the plan sponsor elects (at such time and in
2 such form and manner as shall be prescribed by the
3 Secretary of the Treasury) to be so treated.

4 Any election under this subsection may be revoked only with
5 the consent of the Secretary of the Treasury.”.

6 (c) *REGULATIONS.*—The Secretary of the Treasury
7 may prescribe such regulations as may be necessary to
8 carry out the purposes of the amendments made by this sec-
9 tion.

10 (d) *EFFECTIVE DATE.*—

11 (1) *IN GENERAL.*—The amendment made by sub-
12 section (a) shall apply to plan years beginning on or
13 after January 1, 2009.

14 (2) *ELIGIBLE CHARITY PLANS.*—The amend-
15 ments made by subsection (b) shall apply to plan
16 years beginning after December 31, 2009.

17 **SEC. 303. SUSPENSION OF CERTAIN FUNDING LEVEL LIM-**
18 **TATIONS.**

19 (a) *LIMITATIONS ON BENEFIT ACCRUALS.*—Section
20 203 of the Worker, Retiree, and Employer Recovery Act of
21 2008 (Public Law 110–458; 122 Stat. 5118) is amended—

22 (1) by striking “the first plan year beginning
23 during the period beginning on October 1, 2008, and
24 ending on September 30, 2009” and inserting “any

1 *plan year beginning during the period beginning on*
2 *October 1, 2008, and ending on December 31, 2011”;*

3 *(2) by striking “substituting” and all that fol-*
4 *lows through “for such plan year” and inserting*
5 *“substituting for such percentage the plan’s adjusted*
6 *funding target attainment percentage for the last plan*
7 *year ending before September 30, 2009,”; and*

8 *(3) by striking “for the preceding plan year is*
9 *greater” and inserting “for such last plan year is*
10 *greater”.*

11 *(b) SOCIAL SECURITY LEVEL-INCOME OPTIONS.—*

12 *(1) ERISA AMENDMENT.—Section 206(g)(3)(E)*
13 *of the Employee Retirement Income Security Act of*
14 *1974 is amended by adding at the end the following*
15 *new sentence: “For purposes of applying clause (i) in*
16 *the case of payments the annuity starting date for*
17 *which occurs on or before December 31, 2011, pay-*
18 *ments under a social security leveling option shall be*
19 *treated as not in excess of the monthly amount paid*
20 *under a single life annuity (plus an amount not in*
21 *excess of a social security supplement described in the*
22 *last sentence of section 204(b)(1)(G)).”.*

23 *(2) IRC AMENDMENT.—Section 436(d)(5) of the*
24 *Internal Revenue Code of 1986 is amended by adding*
25 *at the end the following new sentence: “For purposes*

1 *of applying subparagraph (A) in the case of pay-*
2 *ments the annuity starting date for which occurs on*
3 *or before December 31, 2011, payments under a social*
4 *security leveling option shall be treated as not in ex-*
5 *cess of the monthly amount paid under a single life*
6 *annuity (plus an amount not in excess of a social se-*
7 *curity supplement described in the last sentence of*
8 *section 411(a)(9)).”.*

9 (3) *EFFECTIVE DATE.*—

10 (A) *IN GENERAL.*—*The amendments made*
11 *by this subsection shall apply to annuity pay-*
12 *ments the annuity starting date for which occurs*
13 *on or after January 1, 2011.*

14 (B) *PERMITTED APPLICATION.*—*A plan*
15 *shall not be treated as failing to meet the re-*
16 *quirements of sections 206(g) of the Employee*
17 *Retirement Income Security Act of 1974 (as*
18 *amended by this subsection) and section 436(d)*
19 *of the Internal Revenue Code of 1986 (as so*
20 *amended) if the plan sponsor elects to apply the*
21 *amendments made by this subsection to pay-*
22 *ments the annuity starting date for which occurs*
23 *on or after the date of the enactment of this Act*
24 *and before January 1, 2011.*

1 (c) *APPLICATION OF CREDIT BALANCE WITH RESPECT*
2 *TO LIMITATIONS ON SHUTDOWN BENEFITS AND UNPRE-*
3 *DICTABLE CONTINGENT EVENT BENEFITS.*—*With respect to*
4 *plan years beginning on or before December 31, 2011, in*
5 *applying paragraph (5)(C) of subsection (g) of section 206*
6 *of the Employee Retirement Income Security Act of 1974*
7 *and subsection (f)(3) of section 436 of the Internal Revenue*
8 *Code of 1986 in the case of unpredictable contingent events*
9 *(within the meaning of section 206(g)(1)(C) of such Act and*
10 *section 436(b)(3) of such Code) occurring on or after Janu-*
11 *ary 1, 2010, the references, in clause (i) of such paragraph*
12 *(5)(C) and subparagraph (A) of such subsection (f)(3), to*
13 *paragraph (1)(B) of such subsection (g) and subsection*
14 *(b)(2) of such section 436 shall be disregarded.*

15 **SEC. 304. LOOKBACK FOR CREDIT BALANCE RULE.**

16 (a) *AMENDMENT TO ERISA.*—*Paragraph (3) of section*
17 *303(f) of the Employee Retirement Income Security Act of*
18 *1974 is amended by adding the following at the end thereof:*

19 “(D) *SPECIAL RULE FOR CERTAIN PLAN*
20 *YEARS.*—

21 “(i) *IN GENERAL.*—*For purposes of ap-*
22 *plying subparagraph (C) for plan years be-*
23 *ginning after June 30, 2009, and on or be-*
24 *fore December 31, 2011, the ratio deter-*

1 *mined under such subparagraph for the pre-*
2 *ceding plan year shall be the greater of—*

3 *“(I) such ratio, as determined*
4 *without regard to this subparagraph,*
5 *or*

6 *“(II) the ratio for such plan for*
7 *the plan year beginning after June 30,*
8 *2007, and on or before June 30, 2008,*
9 *as determined under rules prescribed*
10 *by the Secretary of the Treasury.*

11 *“(ii) SPECIAL RULE.—In the case of a*
12 *plan for which the valuation date is not the*
13 *first day of the plan year—*

14 *“(I) clause (i) shall apply to plan*
15 *years beginning after December 31,*
16 *2008, and on or before December 31,*
17 *2010, and*

18 *“(II) clause (i)(II) shall apply*
19 *based on the last plan year beginning*
20 *before July 1, 2007, as determined*
21 *under rules prescribed by the Secretary*
22 *of the Treasury.”.*

23 *(b) AMENDMENT TO INTERNAL REVENUE CODE OF*
24 *1986.—Paragraph (3) of section 430(f) of the Internal Rev-*

1 *enue Code of 1986 is amended by adding the following at*
2 *the end thereof:*

3 “(D) *SPECIAL RULE FOR CERTAIN PLAN*
4 *YEARS.—*

5 “(i) *IN GENERAL.—For purposes of ap-*
6 *plying subparagraph (C) for plan years be-*
7 *ginning after June 30, 2009, and on or be-*
8 *fore December 31, 2011, the ratio deter-*
9 *mined under such subparagraph for the pre-*
10 *ceding plan year shall be the greater of—*

11 “(I) *such ratio, as determined*
12 *without regard to this subparagraph,*
13 *or*

14 “(II) *the ratio for such plan for*
15 *the plan year beginning after June 30,*
16 *2007, and on or before June 30, 2008,*
17 *as determined under rules prescribed*
18 *by the Secretary.*

19 “(ii) *SPECIAL RULE.—In the case of a*
20 *plan for which the valuation date is not the*
21 *first day of the plan year—*

22 “(I) *clause (i) shall apply to plan*
23 *years beginning after December 31,*
24 *2008, and on or before December 31,*
25 *2010, and*

1 “(II) clause (i)(II) shall apply
2 based on the last plan year beginning
3 before July 1, 2007, as determined
4 under rules prescribed by the Sec-
5 retary.”.

6 **SEC. 305. INFORMATION REPORTING.**

7 (a) *IN GENERAL.*—Section 4010(b) of the Employee
8 *Retirement Security Act of 1974 (29 U.S.C. 1310(b)) is*
9 *amended by striking paragraph (1) and inserting the fol-*
10 *lowing:*

11 “(1) either of the following requirements are met:

12 “(A) the funding target attainment percent-
13 age (as defined in subsection (d)(2)(B)) at the
14 end of the preceding plan year of a plan main-
15 tained by the contributing sponsor or any mem-
16 ber of its controlled group is less than 80 per-
17 cent; or

18 “(B) the aggregate unfunded vested benefits
19 (as determined under section 4006(a)(3)(E)(iii))
20 of plans maintained by the contributing sponsor
21 and the members of its controlled group exceed
22 \$75,000,000 (disregarding plans with no un-
23 funded vested benefits);”.

24 (b) *EFFECTIVE DATE.*—The amendment made by this
25 *section shall apply to years beginning after 2009.*

1 **SEC. 306. ROLLOVER OF AMOUNTS RECEIVED IN AIRLINE**
2 **CARRIER BANKRUPTCY.**

3 (a) *GENERAL RULES.—*

4 (1) *ROLLOVER OF AIRLINE PAYMENT AMOUNT.—*

5 *If a qualified airline employee receives any airline*
6 *payment amount and transfers any portion of such*
7 *amount to a traditional IRA within 180 days of re-*
8 *ceipt of such amount (or, if later, within 180 days of*
9 *the date of the enactment of this Act), then such*
10 *amount (to the extent so transferred) shall be treated*
11 *as a rollover contribution described in section 402(c)*
12 *of the Internal Revenue Code of 1986. A qualified air-*
13 *line employee making such a transfer may exclude*
14 *from gross income the amount transferred, in the tax-*
15 *able year in which the airline payment amount was*
16 *paid to the qualified airline employee by the commer-*
17 *cial passenger airline carrier.*

18 (2) *TRANSFER OF AMOUNTS ATTRIBUTABLE TO*
19 *AIRLINE PAYMENT AMOUNT FOLLOWING ROLLOVER TO*
20 *ROTH IRA.—A qualified airline employee who has*
21 *contributed an airline payment amount to a Roth*
22 *IRA that is treated as a qualified rollover contribu-*
23 *tion pursuant to section 125 of the Worker, Retiree,*
24 *and Employer Recovery Act of 2008 may transfer to*
25 *a traditional IRA, in a trustee-to-trustee transfer, all*
26 *or any part of the contribution (together with any net*

1 *income allocable to such contribution), and the trans-*
2 *fer to the traditional IRA will be deemed to have been*
3 *made at the time of the rollover to the Roth IRA, if*
4 *such transfer is made within 180 days of the date of*
5 *the enactment of this Act. A qualified airline em-*
6 *ployee making such a transfer may exclude from gross*
7 *income the airline payment amount previously rolled*
8 *over to the Roth IRA, to the extent an amount attrib-*
9 *utable to the previous rollover was transferred to a*
10 *traditional IRA, in the taxable year in which the air-*
11 *line payment amount was paid to the qualified air-*
12 *line employee by the commercial passenger airline*
13 *carrier. No amount so transferred to a traditional*
14 *IRA may be treated as a qualified rollover contribu-*
15 *tion with respect to a Roth IRA within the 5-taxable*
16 *year period beginning with the taxable year in which*
17 *such transfer was made.*

18 (3) *EXTENSION OF TIME TO FILE CLAIM FOR RE-*
19 *FUND.—A qualified airline employee who excludes an*
20 *amount from gross income in a prior taxable year*
21 *under paragraph (1) or (2) may reflect such exclusion*
22 *in a claim for refund filed within the period of limi-*
23 *tation under section 6511(a) (or, if later, April 15,*
24 *2011).*

1 (b) *TREATMENT OF AIRLINE PAYMENT AMOUNTS AND*
2 *TRANSFERS FOR EMPLOYMENT TAXES.*—For purposes of
3 *chapter 21 of the Internal Revenue Code of 1986 and section*
4 *209 of the Social Security Act, an airline payment amount*
5 *shall not fail to be treated as a payment of wages by the*
6 *commercial passenger airline carrier to the qualified airline*
7 *employee in the taxable year of payment because such*
8 *amount is excluded from the qualified airline employee’s*
9 *gross income under subsection (a).*

10 (c) *DEFINITIONS AND SPECIAL RULES.*—For purposes
11 *of this section—*

12 (1) *AIRLINE PAYMENT AMOUNT.*—

13 (A) *IN GENERAL.*—The term “airline pay-
14 *ment amount” means any payment of any*
15 *money or other property which is payable by a*
16 *commercial passenger airline carrier to a quali-*
17 *fied airline employee—*

18 (i) *under the approval of an order of*
19 *a Federal bankruptcy court in a case filed*
20 *after September 11, 2001, and before Janu-*
21 *ary 1, 2007; and*

22 (ii) *in respect of the qualified airline*
23 *employee’s interest in a bankruptcy claim*
24 *against the carrier, any note of the carrier*
25 *(or amount paid in lieu of a note being*

1 issued), or any other fixed obligation of the
2 carrier to pay a lump sum amount.

3 *The amount of such payment shall be determined*
4 *without regard to any requirement to deduct and*
5 *withhold tax from such payment under sections*
6 *3102(a) and 3402(a).*

7 (B) *EXCEPTION.—An airline payment*
8 *amount shall not include any amount payable*
9 *on the basis of the carrier’s future earnings or*
10 *profits.*

11 (2) *QUALIFIED AIRLINE EMPLOYEE.—The term*
12 *“qualified airline employee” means an employee or*
13 *former employee of a commercial passenger airline*
14 *carrier who was a participant in a defined benefit*
15 *plan maintained by the carrier which—*

16 (A) *is a plan described in section 401(a) of*
17 *the Internal Revenue Code of 1986 which in-*
18 *cludes a trust exempt from tax under section*
19 *501(a) of such Code; and*

20 (B) *was terminated or became subject to the*
21 *restrictions contained in paragraphs (2) and (3)*
22 *of section 402(b) of the Pension Protection Act of*
23 *2006.*

24 (3) *TRADITIONAL IRA.—The term “traditional*
25 *IRA” means an individual retirement plan (as de-*

1 *defined in section 7701(a)(37) of the Internal Revenue*
2 *Code of 1986) which is not a Roth IRA.*

3 (4) *ROTH IRA.*—*The term “Roth IRA” has the*
4 *meaning given such term by section 408A(b) of such*
5 *Code.*

6 (d) *SURVIVING SPOUSE.*—*If a qualified airline em-*
7 *ployee died after receiving an airline payment amount, or*
8 *if an airline payment amount was paid to the surviving*
9 *spouse of a qualified airline employee in respect of the*
10 *qualified airline employee, the surviving spouse of the*
11 *qualified airline employee may take all actions permitted*
12 *under section 125 of the Worker, Retiree and Employer Re-*
13 *covery Act of 2008, or under this section, to the same extent*
14 *that the qualified airline employee could have done had the*
15 *qualified airline employee survived.*

16 (e) *EFFECTIVE DATE.*—*This section shall apply to*
17 *transfers made after the date of the enactment of this Act*
18 *with respect to airline payment amounts paid before, on,*
19 *or after such date.*

20 **PART 2—MULTIEMPLOYER PLANS**

21 **SEC. 311. OPTIONAL USE OF 30-YEAR AMORTIZATION PERI-**
22 **ODS.**

23 (a) *ELECTIVE SPECIAL RELIEF RULES.*—

24 (1) *ERISA AMENDMENT.*—*Section 304(b) of the*
25 *Employee Retirement Income Security Act of 1974 is*

1 *amended by adding at the end the following new*
2 *paragraph:*

3 “(8) *ELECTIVE SPECIAL RELIEF RULES.—Not-*
4 *withstanding any other provision of this subsection—*

5 “(A) *AMORTIZATION OF NET INVESTMENT*
6 *LOSSES.—*

7 “(i) *IN GENERAL.—The plan sponsor*
8 *of a multiemployer plan with respect to*
9 *which the solvency test under subparagraph*
10 *(B) is met may elect to treat the portion of*
11 *any experience loss or gain for a plan year*
12 *that is attributable to the allocable portion*
13 *of the net investment losses incurred in ei-*
14 *ther or both of the first two plan years end-*
15 *ing on or after June 30, 2008, as an experi-*
16 *ence loss separate from other experience*
17 *losses or gains to be amortized in equal an-*
18 *nuual installments (until fully amortized)*
19 *over the period—*

20 “(I) *beginning with the plan year*
21 *for which the allocable portion is deter-*
22 *mined, and*

23 “(II) *ending with the last plan*
24 *year in the 30-plan year period begin-*
25 *ning with the plan year following the*

1 *plan year in which such net invest-*
2 *ment loss was incurred.*

3 “(ii) *COORDINATION WITH EXTEN-*
4 *SIONS.—If an election is made under clause*
5 *(i) for any plan year—*

6 “(I) *no extension of the amortiza-*
7 *tion period under clause (i) shall be al-*
8 *lowed under subsection (d), and*

9 “(II) *if an extension was granted*
10 *under subsection (d) for any plan year*
11 *before the plan year for which the elec-*
12 *tion under this subparagraph is made,*
13 *such extension shall not result in such*
14 *amortization period exceeding 30*
15 *years.*

16 “(iii) *DEFINITIONS AND RULES.—For*
17 *purposes of this subparagraph—*

18 “(I) *NET INVESTMENT LOSSES.—*

19 “(aa) *IN GENERAL.—The net*
20 *investment loss incurred by a*
21 *plan in a plan year is equal to*
22 *the excess of—*

23 “(AA) *the expected value*
24 *of the assets as of the end of*
25 *the plan year, over*

1 “(BB) the market value
2 of the assets as of the end of
3 the plan year,
4 including any difference attrib-
5 utable to a criminally fraudulent
6 investment arrangement.

7 “(bb) EXPECTED VALUE.—
8 For purposes of item (aa), the ex-
9 pected value of the assets as of the
10 end of a plan year is the excess
11 of—

12 “(AA) the market value
13 of the assets at the beginning
14 of the plan year plus con-
15 tributions made during the
16 plan year, over

17 “(BB) disbursements
18 made during the plan year.

19 The amounts described in
20 subitems (AA) and (BB) shall be
21 adjusted with interest at the valu-
22 ation rate to the end of the plan
23 year.

24 “(II) CRIMINALLY FRAUDULENT
25 INVESTMENT ARRANGEMENTS.—The de-

1 *termination as to whether an arrange-*
2 *ment is a criminally fraudulent invest-*
3 *ment arrangement shall be made under*
4 *rules substantially similar to the rules*
5 *prescribed by the Secretary of the*
6 *Treasury for purposes of section 165 of*
7 *the Internal Revenue Code of 1986.*

8 *“(III) AMOUNT ATTRIBUTABLE TO*
9 *ALLOCABLE PORTION OF NET INVEST-*
10 *MENT LOSS.—The amount attributable*
11 *to the allocable portion of the net in-*
12 *vestment loss for a plan year shall be*
13 *an amount equal to the allocable por-*
14 *tion of net investment loss for the plan*
15 *year under subclauses (IV) and (V), in-*
16 *creased with interest at the valuation*
17 *rate determined from the plan year*
18 *after the plan year in which the net*
19 *investment loss was incurred.*

20 *“(IV) ALLOCABLE PORTION OF*
21 *NET INVESTMENT LOSSES.—Except as*
22 *provided in subclause (V), the net in-*
23 *vestment loss incurred in a plan year*
24 *shall be allocated among the 5 plan*
25 *years following the plan year in which*

1 *the investment loss is incurred in ac-*
 2 *cordance with the following table:*

<i>“Plan year after the plan year in which the net investment loss was incurred</i>	<i>Allocable portion of net investment loss</i>
<i>1st</i>	<i>1/2</i>
<i>2nd</i>	<i>0</i>
<i>3rd</i>	<i>1/6</i>
<i>4th</i>	<i>1/6</i>
<i>5th</i>	<i>1/6</i>

3 *“(V) SPECIAL RULE FOR PLANS*
 4 *THAT ADOPT LONGER SMOOTHER PE-*
 5 *RIOD.—If a plan sponsor elects an ex-*
 6 *tended smoothing period for its asset*
 7 *valuation method under subsection*
 8 *(c)(2)(B), then the allocable portion of*
 9 *net investment loss for the first two*
 10 *plan years following the plan year the*
 11 *investment loss is incurred is the same*
 12 *as determined under subclause (IV),*
 13 *but the remaining 1/2 of the net invest-*
 14 *ment loss is allocated ratably over the*
 15 *period beginning with the third plan*
 16 *year following the plan year the net*
 17 *investment loss is incurred and ending*
 18 *with the last plan year in the extended*
 19 *smoothing period.*

20 *“(VI) SPECIAL RULE FOR OVER-*
 21 *STATEMENT OF LOSS.—If, for a plan*
 22 *year, there is an experience loss for the*

1 *plan and the amount described in sub-*
2 *clause (III) exceeds the total amount of*
3 *the experience loss for the plan year,*
4 *then the excess shall be treated as an*
5 *experience gain.*

6 “(VII) *SPECIAL RULE IN YEARS*
7 *FOR WHICH OVERALL EXPERIENCE IS*
8 *GAIN.—If, for a plan year, there is no*
9 *experience loss for the plan, then, in*
10 *addition to amortization of net invest-*
11 *ment losses under clause (i), the*
12 *amount described in subclause (III)*
13 *shall be treated as an experience gain*
14 *in addition to any other experience*
15 *gain.*

16 “(B) *SOLVENCY TEST.—*

17 “(i) *IN GENERAL.—An election may be*
18 *made under this paragraph if the election*
19 *includes certification by the plan actuary*
20 *in connection with the election that the plan*
21 *is projected to have a funded percentage at*
22 *the end of the first 15 plan years that is not*
23 *less than 100 percent of the funded percent-*
24 *age for the plan year of the election.*

1 “(i) *FUNDED PERCENTAGE.*— *For*
2 *purposes of clause (i), the term ‘funded per-*
3 *centage’ has the meaning provided in sec-*
4 *tion 305(i)(2), except that the value of the*
5 *plan’s assets referred to in section*
6 *305(i)(2)(A) shall be the market value of*
7 *such assets.*

8 “(iii) *ACTUARIAL ASSUMPTIONS.*—*In*
9 *making any certification under this sub-*
10 *paragraph, the plan actuary shall use the*
11 *same actuarial estimates, assumptions, and*
12 *methods as those applicable for the most re-*
13 *cent certification under section 305, except*
14 *that the plan actuary may take into ac-*
15 *count benefit reductions and increases in*
16 *contribution rates, under either funding im-*
17 *provement plans adopted under section*
18 *305(c) or under section 432(c) of the Inter-*
19 *nal Revenue Code of 1986 or rehabilitation*
20 *plans adopted under section 305(e) or under*
21 *section 432(e) of such Code, that the plan*
22 *actuary reasonably anticipates will occur*
23 *without regard to any change in status of*
24 *the plan resulting from the election.*

1 “(C) *ADDITIONAL RESTRICTION ON BENEFIT*
2 *INCREASES.—If an election is made under sub-*
3 *paragraph (A), then, in addition to any other*
4 *applicable restrictions on benefit increases, a*
5 *plan amendment which is adopted on or after*
6 *March 10, 2010, and which increases benefits*
7 *may not go into effect during the period begin-*
8 *ning on such date and ending with the second*
9 *plan year beginning after such date unless—*

10 “(i) *the plan actuary certifies that—*

11 “(I) *any such increase is paid for*
12 *out of additional contributions not al-*
13 *located to the plan immediately before*
14 *the election to have this paragraph*
15 *apply to the plan, and*

16 “(II) *the plan’s funded percentage*
17 *and projected credit balances for the*
18 *first 3 plan years ending on or after*
19 *such date are reasonably expected to be*
20 *at least as high as such percentage and*
21 *balances would have been if the benefit*
22 *increase had not been adopted, or*

23 “(ii) *the amendment is required as a*
24 *condition of qualification under part I of*
25 *subchapter D of chapter 1 of the Internal*

1 *Revenue Code of 1986 or to comply with*
2 *other applicable law.*

3 “(D) *TIME, FORM, AND MANNER OF ELEC-*
4 *TION.—An election under this paragraph shall be*
5 *made not later than June 30, 2011, and shall be*
6 *made in such form and manner as the Secretary*
7 *of the Treasury may prescribe.*

8 “(E) *REPORTING.—A plan sponsor of a*
9 *plan to which this paragraph applies shall—*

10 “(i) *give notice of such election to par-*
11 *ticipants and beneficiaries of the plan, and*

12 “(ii) *inform the Pension Benefit Guar-*
13 *anty Corporation of such election in such*
14 *form and manner as the Pension Benefit*
15 *Guaranty Corporation may prescribe.”.*

16 (2) *IRC AMENDMENT.—Section 431(b) of the In-*
17 *ternal Revenue Code of 1986 is amended by adding*
18 *at the end the following new paragraph:*

19 “(8) *ELECTIVE SPECIAL RELIEF RULES.—Not-*
20 *withstanding any other provision of this subsection—*

21 “(A) *AMORTIZATION OF NET INVESTMENT*
22 *LOSSES.—*

23 “(i) *IN GENERAL.—The plan sponsor*
24 *of a multiemployer plan with respect to*
25 *which the solvency test under subparagraph*

1 *(B) is met may elect to treat the portion of*
2 *any experience loss or gain for a plan year*
3 *that is attributable to the allocable portion*
4 *of the net investment losses incurred in ei-*
5 *ther or both of the first two plan years end-*
6 *ing on or after June 30, 2008, as an experi-*
7 *ence loss separate from other experience*
8 *losses and gains to be amortized in equal*
9 *annual installments (until fully amortized)*
10 *over the period—*

11 *“(I) beginning with the plan year*
12 *for which the allocable portion is deter-*
13 *mined, and*

14 *“(II) ending with the last plan*
15 *year in the 30-plan year period begin-*
16 *ning with the plan year following the*
17 *plan year in which such net invest-*
18 *ment loss was incurred.*

19 *“(ii) COORDINATION WITH EXTEN-*
20 *SIONS.—If an election is made under clause*
21 *(i) for any plan year—*

22 *“(I) no extension of the amortiza-*
23 *tion period under clause (i) shall be al-*
24 *lowed under subsection (d), and*

1 “(II) if an extension was granted
2 under subsection (d) for any plan year
3 before the plan year for which the elec-
4 tion under this subparagraph is made,
5 such extension shall not result in such
6 amortization period exceeding 30
7 years.

8 “(iii) *DEFINITIONS AND RULES.*—For
9 purposes of this subparagraph—

10 “(I) *NET INVESTMENT LOSSES.*—

11 “(aa) *IN GENERAL.*—The net
12 investment loss incurred by a
13 plan in a plan year is equal to
14 the excess of—

15 “(AA) the expected value
16 of the assets as of the end of
17 the plan year, over

18 “(BB) the market value
19 of the assets as of the end of
20 the plan year,
21 including any difference attrib-
22 utable to a criminally fraudulent
23 investment arrangement.

24 “(bb) *EXPECTED VALUE.*—
25 For purposes of item (aa), the ex-

1 pected value of the assets as of the
2 end of a plan year is the excess
3 of—

4 “(AA) the market value
5 of the assets at the beginning
6 of the plan year plus con-
7 tributions made during the
8 plan year, over

9 “(BB) disbursements
10 made during the plan year.

11 The amounts described in
12 subitems (AA) and (BB) shall be
13 adjusted with interest at the valu-
14 ation rate to the end of the plan
15 year.

16 “(II) *CRIMINALLY FRAUDULENT*
17 *INVESTMENT ARRANGEMENTS.*—The de-
18 termination as to whether an arrange-
19 ment is a criminally fraudulent invest-
20 ment arrangement shall be made under
21 rules substantially similar to the rules
22 prescribed by the Secretary for pur-
23 poses of section 165.

24 “(III) *AMOUNT ATTRIBUTABLE TO*
25 *ALLOCABLE PORTION OF NET INVEST-*

1 *MENT LOSS.—The amount attributable*
 2 *to the allocable portion of the net in-*
 3 *vestment loss for a plan year shall be*
 4 *an amount equal to the allocable por-*
 5 *tion of net investment loss for the plan*
 6 *year under subclauses (IV) and (V), in-*
 7 *creased with interest at the valuation*
 8 *rate determined from the plan year*
 9 *after the plan year in which the net*
 10 *investment loss was incurred.*

11 *“(IV) ALLOCABLE PORTION OF*
 12 *NET INVESTMENT LOSSES.—Except as*
 13 *provided in subclause (V), the net in-*
 14 *vestment loss incurred in a plan year*
 15 *shall be allocated among the 5 plan*
 16 *years following the plan year in which*
 17 *the investment loss is incurred in ac-*
 18 *cordance with the following table:*

<i>“Plan year after the plan year in which the net investment loss was incurred</i>	<i>Allocable portion of net investment loss</i>
<i>1st</i>	<i>1/2</i>
<i>2nd</i>	<i>0</i>
<i>3rd</i>	<i>1/6</i>
<i>4th</i>	<i>1/6</i>
<i>5th</i>	<i>1/6</i>

19 *“(V) SPECIAL RULE FOR PLANS*
 20 *THAT ADOPT LONGER SMOOTHER PE-*
 21 *RIOD.—If a plan sponsor elects an ex-*
 22 *tended smoothing period for its asset*

1 *valuation method under subsection*
2 *(c)(2)(B), then the allocable portion of*
3 *net investment loss for the first two*
4 *plan years following the plan year the*
5 *investment loss is incurred is the same*
6 *as determined under subclause (IV),*
7 *but the remaining 1/2 of the net invest-*
8 *ment loss is allocated ratably over the*
9 *period beginning with the third plan*
10 *year following the plan year the net*
11 *investment loss is incurred and ending*
12 *with the last plan year in the extended*
13 *smoothing period.*

14 “(VI) *SPECIAL RULE FOR OVER-*
15 *STATEMENT OF LOSS.—If, for a plan*
16 *year, there is an experience loss for the*
17 *plan and the amount described in sub-*
18 *clause (III) exceeds the total amount of*
19 *the experience loss for the plan year,*
20 *then the excess shall be treated as an*
21 *experience gain.*

22 “(VII) *SPECIAL RULE IN YEARS*
23 *FOR WHICH OVERALL EXPERIENCE IS*
24 *GAIN.—If, for a plan year, there is no*
25 *experience loss for the plan, then, in*

1 *addition to amortization of net invest-*
2 *ment losses under clause (i), the*
3 *amount described in subclause (III)*
4 *shall be treated as an experience gain*
5 *in addition to any other experience*
6 *gain.*

7 “(B) *SOLVENCY TEST.*—

8 “(i) *IN GENERAL.*—*An election may be*
9 *made under this paragraph if the election*
10 *includes certification by the plan actuary*
11 *in connection with the election that the plan*
12 *is projected to have a funded percentage at*
13 *the end of the first 15 plan years that is not*
14 *less than 100 percent of the funded percent-*
15 *age for the plan year of the election.*

16 “(ii) *FUNDED PERCENTAGE.*— *For*
17 *purposes of clause (i), the term ‘funded per-*
18 *centage’ has the meaning provided in sec-*
19 *tion 432(i)(2), except that the value of the*
20 *plan’s assets referred to in section*
21 *432(i)(2)(A) shall be the market value of*
22 *such assets.*

23 “(iii) *ACTUARIAL ASSUMPTIONS.*—*In*
24 *making any certification under this sub-*
25 *paragraph, the plan actuary shall use the*

1 *same actuarial estimates, assumptions, and*
2 *methods as those applicable for the most re-*
3 *cent certification under section 432, except*
4 *that the plan actuary may take into ac-*
5 *count benefit reductions and increases in*
6 *contribution rates, under either funding im-*
7 *provement plans adopted under section*
8 *432(c) or under section 305(e) of the Em-*
9 *ployee Retirement Income Security Act of*
10 *1974 or rehabilitation plans adopted under*
11 *section 432(e) or under section 305(e) of*
12 *such Act, that the plan actuary reasonably*
13 *anticipates will occur without regard to any*
14 *change in status of the plan resulting from*
15 *the election.*

16 “(C) *ADDITIONAL RESTRICTION ON BENEFIT*
17 *INCREASES.—If an election is made under sub-*
18 *paragraph (A), then, in addition to any other*
19 *applicable restrictions on benefit increases, a*
20 *plan amendment which is adopted on or after*
21 *March 10, 2010, and which increases benefits*
22 *may not go into effect during the period begin-*
23 *ning on such date and ending with the second*
24 *plan year beginning after such date unless—*

25 “(i) *the plan actuary certifies that—*

1 “(I) any such increase is paid for
2 out of additional contributions not al-
3 located to the plan immediately before
4 the election to have this paragraph
5 apply to the plan, and

6 “(II) the plan’s funded percentage
7 and projected credit balances for the
8 first 3 plan years ending on or after
9 such date are reasonably expected to be
10 at least as high as such percentage and
11 balances would have been if the benefit
12 increase had not been adopted, or

13 “(ii) the amendment is required as a
14 condition of qualification under part I or to
15 comply with other applicable law.

16 “(D) *TIME, FORM, AND MANNER OF ELEC-*
17 *TION.*—An election under this paragraph shall be
18 made not later than June 30, 2011, and shall be
19 made in such form and manner as the Secretary
20 may prescribe.

21 “(E) *REPORTING.*—A plan sponsor of a
22 plan to which this paragraph applies shall—

23 “(i) give notice of such election to par-
24 ticipants and beneficiaries of the plan, and

1 “(ii) inform the Pension Benefit Guar-
2 anty Corporation of such election in such
3 form and manner as the Pension Benefit
4 Guaranty Corporation may prescribe.”.

5 (b) ASSET SMOOTHING FOR MULTIEMPLOYER
6 PLANS.—

7 (1) ERISA AMENDMENT.—Section 304(c)(2) of
8 the Employee Retirement Income Security Act of
9 1974 (29 U.S.C. 1084(c)(2)) is amended—

10 (A) by redesignating subparagraph (B) as
11 subparagraph (C); and

12 (B) by inserting after subparagraph (A) the
13 following new subparagraph:

14 “(B) EXTENDED ASSET SMOOTHING PERIOD
15 FOR CERTAIN INVESTMENT LOSSES.—The Sec-
16 retary of the Treasury shall not treat the asset
17 valuation method of a multiemployer plan as
18 unreasonable solely because such method spreads
19 the difference between expected and actual re-
20 turns for either or both of the first 2 plan years
21 ending on or after June 30, 2008, over a period
22 of not more than 10 years. Any change in valu-
23 ation method to so spread such difference shall be
24 treated as approved, but only if, in the case that
25 the plan sponsor has made an election under

1 *subsection (b)(8), any resulting change in asset*
2 *value is treated for purposes of amortization as*
3 *a net experience loss or gain.”.*

4 *(2) IRC AMENDMENT.—Section 431(c)(2) of the*
5 *Internal Revenue Code of 1986 is amended—*

6 *(A) by redesignating subparagraph (B) as*
7 *subparagraph (C); and*

8 *(B) by inserting after subparagraph (A) the*
9 *following new subparagraph:*

10 *“(B) EXTENDED ASSET SMOOTHING PERIOD*
11 *FOR CERTAIN INVESTMENT LOSSES.—The Sec-*
12 *retary shall not treat the asset valuation method*
13 *of a multiemployer plan as unreasonable solely*
14 *because such method spreads the difference be-*
15 *tween expected and actual returns for either or*
16 *both of the first 2 plan years ending on or after*
17 *June 30, 2008, over a period of not more than*
18 *10 years. Any change in valuation method to so*
19 *spread such difference shall be treated as ap-*
20 *proved, but only if, in the case that the plan*
21 *sponsor has made an election under subsection*
22 *(b)(8), any resulting change in asset value is*
23 *treated for purposes of amortization as a net ex-*
24 *perience loss or gain.”.*

25 *(c) EFFECTIVE DATE AND SPECIAL RULES.—*

1 (1) *EFFECTIVE DATE.*—*The amendments made*
2 *by this section shall take effect as of the first day of*
3 *the first plan year beginning after June 30, 2008, ex-*
4 *cept that any election a plan sponsor makes pursuant*
5 *to this section or the amendments made thereby that*
6 *affects the plan’s funding standard account for any*
7 *plan year beginning before October 1, 2009, shall be*
8 *disregarded for purposes of applying the provisions of*
9 *section 305 of the Employee Retirement Income Secu-*
10 *rity Act of 1974 and section 432 of the Internal Rev-*
11 *enue Code of 1986 to that plan year.*

12 (2) *DEEMED APPROVAL FOR CERTAIN FUNDING*
13 *METHOD CHANGES.*—*In the case of a multiemployer*
14 *plan with respect to which an election has been made*
15 *under section 304(b)(8) of the Employee Retirement*
16 *Income Security Act of 1974 (as amended by this sec-*
17 *tion) or section 431(b)(8) of the Internal Revenue*
18 *Code of 1986 (as so amended)—*

19 (A) *any change in the plan’s funding meth-*
20 *od for a plan year beginning on or after July 1,*
21 *2008, and on or before December 31, 2010, from*
22 *a method that does not establish a base for expe-*
23 *rience gains and losses to one that does establish*
24 *such a base shall be treated as approved by the*
25 *Secretary of the Treasury; and*

1 (B) any resulting funding method change
2 base shall be treated for purposes of amortization
3 as a net experience loss or gain.

4 **SEC. 312. OPTIONAL LONGER RECOVERY PERIODS FOR**
5 **MULTIEMPLOYER PLANS IN ENDANGERED OR**
6 **CRITICAL STATUS.**

7 (a) *ERISA AMENDMENTS.*—

8 (1) *FUNDING IMPROVEMENT PERIOD.*—Section
9 305(c)(4) of the Employee Retirement Income Security
10 Act of 1974 is amended—

11 (A) by redesignating subparagraphs (C)
12 and (D) as subparagraphs (D) and (E), respectively; and
13

14 (B) by inserting after subparagraph (B) the
15 following new subparagraph:

16 “(C) *ELECTION TO EXTEND PERIOD.*—The
17 plan sponsor of an endangered or seriously en-
18 dangered plan may elect to extend the applicable
19 funding improvement period by up to 5 years,
20 reduced by any extension of the period pre-
21 viously elected pursuant to section 205 of the
22 Worker, Retiree and Employer Relief Act of
23 2008. Such an election shall be made not later
24 than June 30, 2011, and in such form and man-

1 *ner as the Secretary of the Treasury may pre-*
2 *scribe.”.*

3 (2) *REHABILITATION PERIOD.*—*Section 305(e)(4)*
4 *of such Act is amended—*

5 (A) *by redesignating subparagraph (B) as*
6 *subparagraph (C);*

7 (B) *in last sentence of subparagraph (A), by*
8 *striking “subparagraph (B)” each place it ap-*
9 *pears and inserting “subparagraph (C)”; and*

10 (C) *by inserting after subparagraph (A) the*
11 *following new subparagraph:*

12 “(B) *ELECTION TO EXTEND PERIOD.*—*The*
13 *plan sponsor of a plan in critical status may*
14 *elect to extend the rehabilitation period by up to*
15 *five years, reduced by any extension of the period*
16 *previously elected pursuant to section 205 of the*
17 *Worker, Retiree and Employer Relief Act of*
18 *2008. Such an election shall be made not later*
19 *than June 30, 2011, and in such form and man-*
20 *ner as the Secretary of the Treasury may pre-*
21 *scribe.”.*

22 (b) *IRC AMENDMENTS.*—

23 (1) *FUNDING IMPROVEMENT PERIOD.*—*Section*
24 *432(c)(4) of the Internal Revenue Code of 1986 is*
25 *amended—*

1 (A) by redesignating subparagraphs (C)
2 and (D) as subparagraphs (D) and (E), respec-
3 tively; and

4 (B) by inserting after subparagraph (B) the
5 following new subparagraph:

6 “(C) *ELECTION TO EXTEND PERIOD.*—The
7 plan sponsor of an endangered or seriously en-
8 dangered plan may elect to extend the applicable
9 funding improvement period by up to 5 years,
10 reduced by any extension of the period pre-
11 viously elected pursuant to section 205 of the
12 Worker, Retiree and Employer Relief Act of
13 2008. Such an election shall be made not later
14 than June 30, 2011, and in such form and man-
15 ner as the Secretary may prescribe.”.

16 (2) *REHABILITATION PERIOD.*—Section 432(e)(4)
17 of such Code is amended—

18 (A) by redesignating subparagraph (B) as
19 subparagraph (C);

20 (B) in last sentence of subparagraph (A), by
21 striking “subparagraph (B)” each place it ap-
22 pears and inserting “subparagraph (C)”; and

23 (C) by inserting after subparagraph (A) the
24 following new subparagraph:

1 *the period beginning June 30, 2008, and ending October*
 2 *31, 2008, the actual rate of return on the plan assets was*
 3 *equal to the interest rate used for purposes of charging or*
 4 *crediting the funding standard account in such plan year,*
 5 *unless the plan sponsor elects otherwise in such form and*
 6 *manner as shall be prescribed by the Secretary of Treasury.*

7 **(b) REVOCATION OF AMORTIZATION EXTENSIONS.—**
 8 *The plan sponsor of a multiemployer plan may, in such*
 9 *form and manner and after such notice as may be pre-*
 10 *scribed by the Secretary, revoke any amortization extension*
 11 *described in subsection (a), effective for plan years following*
 12 *the date of the revocation.*

13 **SEC. 314. ALTERNATIVE DEFAULT SCHEDULE FOR PLANS IN**
 14 **ENDANGERED OR CRITICAL STATUS.**

15 **(a) ERISA AMENDMENTS.—**

16 **(1) ENDANGERED STATUS.—***Section 305(c)(7) of*
 17 *the Employee Retirement Income Security Act of*
 18 *1974 (29 U.S.C. 1085(c)(7)) is amended by adding at*
 19 *the end the following new subparagraph:*

20 **“(D) ALTERNATIVE DEFAULT SCHEDULE.—**

21 **“(i) IN GENERAL.—***A plan sponsor*
 22 *may, for purposes of this paragraph, des-*
 23 *ignate an alternative schedule of contribu-*
 24 *tion rates and related benefit changes meet-*
 25 *ing the requirements of clause (ii) as the de-*

1 *fault schedule, in lieu of the default schedule*
2 *referred to in subparagraph (A).*

3 “(ii) *REQUIREMENTS.*—*An alternative*
4 *schedule designated pursuant to clause (i)*
5 *meets the requirements of this clause if such*
6 *schedule has been adopted in collective bar-*
7 *gaining agreements covering at least 75 per-*
8 *cent of the active participants as of the date*
9 *of the designation.”.*

10 (2) *CRITICAL STATUS.*—*Section 305(e)(3) of such*
11 *Act (29 U.S.C. 1085(e)(3)) is amended by adding at*
12 *the end the following new subparagraph:*

13 “(D) *ALTERNATIVE DEFAULT SCHEDULE.*—

14 “(i) *IN GENERAL.*—*A plan sponsor*
15 *may, for purposes of subparagraph (C), des-*
16 *ignate an alternative schedule of contribu-*
17 *tion rates and related benefit changes meet-*
18 *ing the requirements of clause (ii) as the de-*
19 *fault schedule, in lieu of the default schedule*
20 *referred to in subparagraph (C)(i).*

21 “(ii) *REQUIREMENTS.*—*An alternative*
22 *schedule designated pursuant to clause (i)*
23 *meets the requirements of this clause if such*
24 *schedule has been adopted in collective bar-*
25 *gaining agreements covering at least 75 per-*

1 *cent of the active participants as of the date*
2 *of the designation.”.*

3 **(b) INTERNAL REVENUE CODE AMENDMENTS.—**

4 **(1) ENDANGERED STATUS.—***Section 432(c)(7) of*
5 *the Internal Revenue Code of 1986 is amended by*
6 *adding at the end the following new subparagraph:*

7 **“(C) ALTERNATIVE DEFAULT SCHEDULE.—**

8 **“(i) IN GENERAL.—***A plan sponsor*
9 *may, for purposes of this paragraph, des-*
10 *ignate an alternative schedule of contribu-*
11 *tion rates and related benefit changes meet-*
12 *ing the requirements of clause (ii) as the de-*
13 *fault schedule, in lieu of the default schedule*
14 *referred to in subparagraph (A).*

15 **“(ii) REQUIREMENTS.—***An alternative*
16 *schedule designated pursuant to clause (i)*
17 *meets the requirements of this clause if such*
18 *schedule has been adopted in collective bar-*
19 *gaining agreements covering at least 75 per-*
20 *cent of the active participants as of the date*
21 *of the designation.”.*

22 **(2) CRITICAL STATUS.—***Section 432(e)(3) of such*
23 *Code is amended by adding at the end the following*
24 *new subparagraph:*

25 **“(D) ALTERNATIVE DEFAULT SCHEDULE.—**

1 *of the Employee Retirement Income Security Act of 1974*
2 *and section 432(b)(3)(A) of the Internal Revenue Code of*
3 *1986 in connection with a certification required under such*
4 *sections the deadline for which is after the date of the enact-*
5 *ment of this Act if the plan actuary makes such certification*
6 *at any time earlier than 75 days after the date of the enact-*
7 *ment of this Act.*

8 *(b) REVISION OF PRIOR CERTIFICATION.—*

9 *(1) IN GENERAL.—If—*

10 *(A) a plan sponsor makes an election under*
11 *section 304(b)(8) of the Employee Retirement In-*
12 *come Security Act of 1974 and section 431(b)(8)*
13 *of the Internal Revenue Code of 1986, or under*
14 *section 304(c)(2)(B) of such Act and section*
15 *432(c)(2)(B) such Code, with respect to a plan*
16 *for a plan year beginning on or after October 1,*
17 *2009; and*

18 *(B) the plan actuary’s certification of the*
19 *plan status for such plan year (hereinafter in*
20 *this subsection referred to as “original certifi-*
21 *cation”)* *did not take into account any election*
22 *so made,*

23 *then the plan sponsor may direct the plan actuary to*
24 *make a new certification with respect to the plan for*
25 *the plan year which takes into account such election*

1 *(hereinafter in this subsection referred to as “new cer-*
2 *tification”)* if the plan’s status under section 305 of
3 *such Act and section 432 of such Code would change*
4 *as a result of such election. Any such new certifi-*
5 *cation shall be treated as the most recent certification*
6 *referred to in section 304(b)(3)(B)(iii) of such Act*
7 *and section 431(b)(8)(B)(iii) of such Code.*

8 (2) *DUE DATE FOR NEW CERTIFICATION.—Any*
9 *such new certification shall be made pursuant to sec-*
10 *tion 305(b)(3) of such Act and section 432(b)(3) of*
11 *such Code; except that any such new certification*
12 *shall be made not later than 75 days after the date*
13 *of the enactment of this Act.*

14 (3) *NOTICE.—*

15 (A) *IN GENERAL.—Except as provided in*
16 *subparagraph (B), any such new certification*
17 *shall be treated as the original certification for*
18 *purposes of section 305(b)(3)(D) of such Act and*
19 *section 432(b)(3)(D) of such Code.*

20 (B) *NOTICE ALREADY PROVIDED.—In any*
21 *case in which notice has been provided under*
22 *such sections with respect to the original certifi-*
23 *cation, not later than 30 days after the new cer-*
24 *tification is made, the plan sponsor shall provide*

1 *notice of any change in status under rules simi-*
 2 *lar to the rules such sections.*

3 (4) *EFFECT OF CHANGE IN STATUS.*—*If a plan*
 4 *ceases to be in critical status pursuant to the new cer-*
 5 *tification, then the plan shall, not later than 30 days*
 6 *after the due date described in paragraph (2), cease*
 7 *any restriction of benefit payments, and imposition of*
 8 *contribution surcharges, under section 305 of such Act*
 9 *and section 432 of such Code by reason of the original*
 10 *certification.*

11 ***Subtitle B—Fee Disclosure***

12 ***SEC. 321. SHORT TITLE OF SUBTITLE.***

13 *This subtitle may be cited as the “Defined Contribu-*
 14 *tion Fee Disclosure Act of 2010”.*

15 ***SEC. 322. AMENDMENTS TO THE EMPLOYEE RETIREMENT***

16 ***INCOME SECURITY ACT OF 1974.***

17 (a) *REQUIREMENTS RELATING TO SERVICE PRO-*
 18 *VIDERS AND PLAN ADMINISTRATORS OF INDIVIDUAL AC-*
 19 *COUNT PLANS.*—

20 (1) *IN GENERAL.*—*Part 1 of subtitle B of title I*
 21 *of the Employee Retirement Income Security Act of*
 22 *1974 is amended—*

23 (A) *by redesignating section 111 (29 U.S.C.*
 24 *1031) as section 113; and*

1 (B) by inserting after section 110 (29
2 U.S.C. 1030) the following new sections:

3 **“SEC. 111. REQUIREMENT TO PROVIDE NOTICE OF PLAN**
4 **FEE INFORMATION TO PLAN ADMINISTRA-**
5 **TORS.**

6 “(a) *INITIAL STATEMENT OF SERVICES PROVIDED AND*
7 *REVENUES RECEIVED.—*

8 “(1) *IN GENERAL.—In any case in which a serv-*
9 *ice provider enters into a contract or arrangement to*
10 *provide services to an individual account plan, the*
11 *service provider shall, before entering into such con-*
12 *tract or arrangement, provide to the plan adminis-*
13 *trator a single written statement which includes, with*
14 *respect to the first plan year covered under such con-*
15 *tract or arrangement, the following information:*

16 “(A) *A detailed description of the services*
17 *which will be provided to the plan by the service*
18 *provider, the amount of total expected annual*
19 *revenue with respect to such services, the manner*
20 *in which such revenue will be collected, and the*
21 *extent to which such revenue varies between spe-*
22 *cific investment options.*

23 “(B)(i) *In the case of a service provider who*
24 *is providing recordkeeping services with respect*
25 *to any investment option, such information as is*

1 *necessary for the plan administrator to satisfy*
2 *the requirements of subparagraphs (B)(ii)(IV)*
3 *and (C) of section 105(a)(2) and paragraphs (1)*
4 *and (3) of section 112(a) with respect to such op-*
5 *tion, including specifying the method used by the*
6 *service provider in disclosing or estimating ex-*
7 *penses under subparagraphs (C)(iv) and (E) of*
8 *section 105(a)(2).*

9 *“(i) To the extent provided in regulations*
10 *issued by the Secretary, clause (i) shall not*
11 *apply in the case of a service provider described*
12 *in such clause if the service provider receives a*
13 *written notification from the plan administrator*
14 *that the information described in such clause in*
15 *connection with the investment option is pro-*
16 *vided by another service provider pursuant to a*
17 *contract or arrangement to provide services to*
18 *the plan.*

19 *“(C) A statement indicating—*

20 *“(i) the identity of any investment op-*
21 *tions offered under the plan with respect to*
22 *which the service provider provides substan-*
23 *tial investment, trustee, custodial, or ad-*
24 *ministrative services, and*

1 “(ii) in the case of any investment op-
2 tion, whether the service provider expects to
3 receive any component of total expected an-
4 nual revenue described in paragraph
5 (2)(A)(ii)(II) with respect to such option
6 and the amount of any such component.

7 “(D) The portion of total expected annual
8 revenue which is properly allocable to each of the
9 following:

10 “(i) Administration and recordkeeping.

11 “(ii) Investment management.

12 “(iii) Other services or amounts not
13 described in clause (i) or (ii).

14 “(2) DEFINITION OF TOTAL EXPECTED ANNUAL
15 REVENUE.—For purposes of this section—

16 “(A) IN GENERAL.—The term ‘total expected
17 annual revenue’ means, with respect to any plan
18 year—

19 “(i) any amount expected to be re-
20 ceived during such plan year from the plan
21 (including amounts paid from participant
22 accounts), any participant or beneficiary,
23 or any plan sponsor in connection with the
24 contract or arrangement referred to in
25 paragraph (1), and

1 “(ii) any amount not taken into ac-
2 count under clause (i) which is expected to
3 be received during such plan year by the
4 service provider in connection with—

5 “(I) plan administration, record-
6 keeping, consulting, management, or
7 investment or other service activities
8 undertaken by the service provider
9 with respect to the plan, or

10 “(II) plan administration, record-
11 keeping, consulting, management, or
12 investment or other service activities
13 undertaken by any other person with
14 respect to the plan.

15 “(B) EXPRESSED AS DOLLAR AMOUNT OR
16 PERCENTAGE OF ASSETS.—Total expected an-
17 nual revenue and any amount indicated under
18 paragraph (1)(C)(ii) may be expressed as a dol-
19 lar amount or as a percentage of assets (or a
20 combination thereof), as appropriate. To the ex-
21 tent that total expected annual revenue is ex-
22 pressed as a percentage of assets, such percentage
23 shall be properly allocated among clauses (i),
24 (ii), and (iii) of paragraph (1)(D).

1 “(C) *PROVISION OF FEE SCHEDULE FOR*
2 *CERTAIN PARTICIPANT INITIATED TRANS-*
3 *ACTIONS.—In the case of amounts expected to be*
4 *received from participants or beneficiaries under*
5 *the plan (or from an account of a participant or*
6 *beneficiary) as a fee or charge in connection*
7 *with a transaction initiated by the participant*
8 *(other than loads, commissions, brokerage fees,*
9 *and other investment related transactions)—*

10 “(i) *such amounts shall not be taken*
11 *into account in determining total expected*
12 *annual revenue, and*

13 “(ii) *the service provider shall provide*
14 *to the plan administrator, as part of the*
15 *statement referred to in paragraph (1), a fee*
16 *schedule which describes each such fee or*
17 *charge, the amount thereof, and the manner*
18 *in which such amount is collected.*

19 “(D) *ESTIMATIONS.—In determining under*
20 *this subsection any amount which is expected to*
21 *be received by the service provider, the service*
22 *provider shall provide a reasonable estimate of*
23 *such amount and shall indicate in the statement*
24 *referred to in paragraph (1) whether such*
25 *amount disclosed is an estimate. Any such esti-*

1 *mate shall be based on reasonable assumptions*
2 *specified in such statement.*

3 “(3) *ALLOCATION RULES.*—*The Secretary shall*
4 *provide rules for defining total expected annual rev-*
5 *enue and for the appropriate and consistent alloca-*
6 *tion of total expected annual revenue among clauses*
7 *(i), (ii), and (iii) of paragraph (1)(D), except that the*
8 *entire amount of such revenue shall be allocated*
9 *among such clauses and no amount may be taken into*
10 *account under more than one clause.*

11 “(4) *DISCLOSURE OF DIFFERENT PRICING OF IN-*
12 *VESTMENT OPTIONS.*—*In the case of investment op-*
13 *tions with more than one share class or price level,*
14 *the Secretary shall prescribe regulations for the disclo-*
15 *sure of the different share classes or price levels avail-*
16 *able as part of the statement in paragraph (1). Such*
17 *regulations shall provide guidance with respect to the*
18 *disclosure of the basis for qualifying for such share*
19 *classes or price levels, which may include amounts in-*
20 *vested, number of participants, or other factors.*

21 “(5) *DISCLOSURE OF INVESTMENT TRANSACTION*
22 *COSTS.*—*To the extent provided in regulations issued*
23 *by the Secretary, a service provider shall separately*
24 *disclose the transaction costs (including sales commis-*
25 *sions) for each investment option for the preceding*

1 *year or the plan's allocable share of such costs for the*
2 *preceding year.*

3 “(b) *ANNUAL STATEMENTS.*—*With respect to each*
4 *plan year after the plan year covered by the statement de-*
5 *scribed in subsection (a), the service provider shall provide*
6 *the plan administrator a single written statement which in-*
7 *cludes the information described in subsection (a) with re-*
8 *spect to such subsequent plan year.*

9 “(c) *MATERIAL CHANGE STATEMENTS.*—*In the case of*
10 *any event or other change during a plan year which causes*
11 *the information included in any statement described in sub-*
12 *section (a) or (b) with respect to such plan year to become*
13 *materially incorrect, the service provider shall provide the*
14 *plan administrator a written statement providing the cor-*
15 *rected information not later than 30 days after the service*
16 *provider knows, or exercising reasonable diligence would*
17 *have known, of such event or other change.*

18 “(d) *TIME AND MANNER OF PROVIDING STATEMENT*
19 *AND OTHER MATERIALS.*—*The statement referred to in sub-*
20 *sections (a)(1) and (b) shall be made at such time and in*
21 *such manner as the Secretary may provide. Other materials*
22 *required to be provided under this section shall be provided*
23 *in such manner as the Secretary may provide. All informa-*
24 *tion included in such statements and other materials shall*

1 *be presented in a manner which is easily understood by*
2 *the typical plan administrator.*

3 “(e) *EXCEPTION FOR SMALL SERVICE PROVIDERS.—*

4 *The requirements of this section shall not apply with respect*
5 *to any contract or arrangement for services provided with*
6 *respect to an individual account plan for any plan year*
7 *if—*

8 “(1) *the total annual revenue expected by the*
9 *service provider to be received with respect to the plan*
10 *for such plan year is less than \$5,000, and*

11 “(2) *the service provider provides a written*
12 *statement to the plan administrator that the total an-*
13 *nuual revenue expected by the service provider to be re-*
14 *ceived with respect to the plan is less than \$5,000.*

15 *Service providers who expect to receive de minimis annual*
16 *revenue from the plan need not provide the written state-*
17 *ment described in paragraph (2). The Secretary may by*
18 *regulation or other guidance adjust the dollar amount speci-*
19 *fied in this subsection.*

20 “(f) *DEFINITION OF SERVICE PROVIDER.—For pur-*
21 *poses of this section—*

22 “(1) *IN GENERAL.—The term ‘service provider’*
23 *includes any person providing administration, rec-*
24 *ordkeeping, consulting, investment management serv-*

1 *ices, or investment advice to an individual account*
 2 *plan under a contract or arrangement.*

3 “(2) *CONTROLLED GROUPS TREATED AS ONE*
 4 *SERVICE PROVIDER.—All persons which would be*
 5 *treated as a single employer under subsection (b) or*
 6 *(c) of section 414 of the Internal Revenue Code of*
 7 *1986 if section 1563(a)(1) of such Code were ap-*
 8 *plied—*

9 “(A) *except as provided by subparagraph*
 10 *(B), by substituting ‘more than 50 percent’ for*
 11 *‘at least 80 percent’ each place it appears there-*
 12 *in, or*

13 “(B) *for purposes of subsection (a)(1)(C)(i),*
 14 *by substituting ‘at least 20 percent’ for ‘at least*
 15 *80 percent’ each place it appears therein,*
 16 *shall be treated as one person for purposes of this sec-*
 17 *tion.*

18 **“SEC. 112. REQUIREMENT TO PROVIDE NOTICE TO PARTICI-**

19 **PANTS OF PLAN FEE INFORMATION.**

20 “(a) *DISCLOSURES TO PARTICIPANTS AND BENE-*
 21 *FICIARIES.—*

22 “(1) *ADVANCE NOTICE OF AVAILABLE INVEST-*
 23 *MENT OPTIONS.—*

24 “(A) *IN GENERAL.—The plan administrator*
 25 *of an applicable individual account plan shall*

1 provide to the participant or beneficiary notice
2 of the investment options available under the
3 plan before—

4 “(i) the earliest date provided for
5 under the plan for the participant’s initial
6 investment of any contribution made on be-
7 half of such participant, and

8 “(ii) the effective date of any change in
9 the list of investment options available
10 under the plan, unless such advance notice
11 is impracticable, and in such case, as soon
12 as is practicable.

13 “(B) *INFORMATION INCLUDED IN NOTICE.*—
14 The notice required under subparagraph (A)
15 shall—

16 “(i) set forth, with respect to each
17 available investment option—

18 “(I) the name of the option,

19 “(II) a general description of the
20 option’s investment objectives and
21 principal investment strategies, prin-
22 cipal risk and return characteristics,
23 and the name of the option’s invest-
24 ment manager,

1 “(III) whether the investment op-
2 tion is designed to be a comprehensive,
3 stand-alone investment for retirement
4 that provides varying degrees of long-
5 term appreciation and capital preser-
6 vation through a mix of equity and
7 fixed income exposures,

8 “(IV) the extent to which the in-
9 vestment option is actively managed or
10 passively managed in relation to an
11 index and the difference between active
12 management and passive management,

13 “(V) where, and the manner in
14 which, additional plan-specific, option-
15 specific, and generally available invest-
16 ment information may be obtained,
17 and

18 “(VI) a statement explaining that
19 investment options should not be evalu-
20 ated solely on the basis of the charges
21 for each option but should also be
22 based on consideration of other key fac-
23 tors, including the risk level of the op-
24 tion, the investment objectives of the
25 option, historical returns of the option,

1 and the participant's personal invest-
2 ment objectives,

3 “(ii) include a statement of the right
4 under paragraph (2) of participants and
5 beneficiaries to request, and a description of
6 how a participant or beneficiary may re-
7 quest, a copy of the statements received by
8 the plan administrator under section 111
9 with respect to the plan, and

10 “(iii) include the plan fee comparison
11 chart described in subparagraph (C).

12 “(C) *PLAN FEE COMPARISON CHART.*—

13 “(i) *IN GENERAL.*—

14 “(I) *IN GENERAL.*—The notice
15 provided under this paragraph shall
16 include a plan fee comparison chart
17 consisting of a comparison of the serv-
18 ice and investment charges that will or
19 could be assessed against the account of
20 the participant or beneficiary with re-
21 spect to the plan year.

22 “(II) *EXPRESSED AS DOLLAR*
23 *AMOUNT OR FORMULA.*—For purposes
24 of this subparagraph, such charges
25 shall be provided in the form of a dol-

1 *lar amount or as a formula (such as a*
2 *percentage of assets), as appropriate.*

3 *“(ii) CATEGORIZATION OF CHARGES.—*

4 *The plan fee comparison chart shall provide*
5 *information in relation to the following cat-*
6 *egories of charges that will or could be as-*
7 *essed against the account of the participant*
8 *or beneficiary:*

9 *“(I) ASSET-BASED CHARGES SPE-*

10 *CIFIC TO INVESTMENT.—Charges that*
11 *vary depending on the investment op-*
12 *tions selected by the participant or*
13 *beneficiary, including the annual oper-*
14 *ating expenses of the investment option*
15 *and investment-specific asset-based*
16 *charges (such as loads, commissions,*
17 *brokerage fees, exchange fees, redemp-*
18 *tion fees, and surrender charges). Ex-*
19 *cept as provided by the Secretary in*
20 *regulations under this section, the in-*
21 *formation relating to such charges*
22 *shall include a statement noting any*
23 *charges for 1 or more investment op-*
24 *tions which pay for services other than*
25 *investment management.*

1 “(II) *RECURRING ASSET-BASED*
2 *CHARGES NOT SPECIFIC TO INVEST-*
3 *MENT.—Charges that are assessed as a*
4 *percentage of the total assets in the ac-*
5 *count of the participant or beneficiary,*
6 *regardless of the investment option se-*
7 *lected.*

8 “(III) *ADMINISTRATIVE AND*
9 *TRANSACTION-BASED CHARGES.—Ad-*
10 *ministration and transaction-based*
11 *charges, including fees charged to par-*
12 *ticipants to cover plan administration,*
13 *compliance, and recordkeeping costs,*
14 *plan loan origination fees, possible re-*
15 *demption fees, and possible surrender*
16 *charges, that are not assessed as a per-*
17 *centage of the total assets in the ac-*
18 *count and are either automatically de-*
19 *ducted each year or result from certain*
20 *transactions engaged in by the partici-*
21 *pant or beneficiary.*

22 “(IV) *OTHER CHARGES.—Any*
23 *other charges which may be deducted*
24 *from participants’ or beneficiaries’ ac-*

1 *counts and which are not described in*
2 *subclauses (I), (II), and (III).*

3 “(iii) *FEES AND HISTORICAL RE-*
4 *TURNS.—The plan fee comparison chart*
5 *shall include—*

6 “(I) *the historical returns, net of*
7 *fees and expenses, for the previous*
8 *year, 5 years, and 10 years (or for the*
9 *period since inception, if shorter) with*
10 *respect to such investment option, and*

11 “(II) *the historical returns of an*
12 *appropriate benchmark, index, or other*
13 *point of comparison for each such pe-*
14 *riod.*

15 “(D) *MODEL NOTICES.—The Secretary shall*
16 *prescribe one or more model notices that may be*
17 *used for purposes of satisfying the requirements*
18 *of this paragraph, including model plan fee com-*
19 *parison charts.*

20 “(E) *ESTIMATIONS.—For purposes of pro-*
21 *viding the notice required under this paragraph,*
22 *the plan administrator may provide a reasonable*
23 *and representative estimate for any charges or*
24 *percentages disclosed under subparagraph (B) or*
25 *(C) and shall indicate whether the amount of*

1 *any such charges or percentages disclosed is an*
2 *estimate.*

3 “(2) *DISCLOSURE OF SERVICE PROVIDER STATE-*
4 *MENTS.—The plan administrator shall provide to any*
5 *participant or beneficiary a copy of any statement re-*
6 *ceived pursuant to section 111 within 30 days after*
7 *receipt of a request for such a statement.*

8 “(3) *NOTICE OF MATERIAL CHANGES.—In the*
9 *case of any event or other change which causes the in-*
10 *formation included in any notice described in para-*
11 *graph (1) to become materially incorrect, the plan ad-*
12 *ministrator shall provide participants and bene-*
13 *ficiaries a written statement providing the corrected*
14 *information not later than 30 days after the plan ad-*
15 *ministrator knows, or exercising reasonable diligence*
16 *would have known, of such event or other change.*

17 “(4) *TIME AND MANNER OF PROVIDING NOTICES*
18 *AND DISCLOSURES.—*

19 “(A) *IN GENERAL.—The notices described in*
20 *paragraph (1) shall be provided at such times*
21 *and in such manner as the Secretary may pro-*
22 *vide. Other notices and materials required to be*
23 *provided under this subsection shall be provided*
24 *in such manner as the Secretary may provide.*

25 “(B) *MANNER OF PRESENTATION.—*

1 “(i) *IN GENERAL.*—All information in-
2 cluded in such notices or explanations shall
3 be presented in a manner which is easily
4 understood by the typical participant.

5 “(ii) *GENERIC EXAMPLE OF OPER-*
6 *ATING EXPENSES OF INVESTMENT OP-*
7 *TIONS.*—The information described in para-
8 graph (1)(C)(ii)(I) shall include a generic
9 example describing the charges that would
10 apply during an annual period with respect
11 to a \$10,000 investment in the investment
12 option.

13 “(b) *APPLICABLE INDIVIDUAL ACCOUNT PLAN.*—For
14 purposes of this section, the term ‘applicable individual ac-
15 count plan’ means the portion of any individual account
16 plan which permits a participant or beneficiary to exercise
17 control over assets in his or her account.

18 “(c) *REGULATIONS.*—The Secretary shall prescribe
19 such regulations or other guidance as may be necessary or
20 appropriate to carry out the purposes of this section, in-
21 cluding regulations or other guidance which—

22 “(1) provide a later deadline for providing the
23 notice of investment menu changes described in sub-
24 section (a)(3) in appropriate circumstances, and

1 “(2) provide guidelines, and a safe harbor, for
2 the selection of an appropriate benchmark, index, or
3 other point of comparison for an investment option
4 under subsection (a)(1)(C)(iii)(II).”.

5 (2) *CLERICAL AMENDMENT.*—*The table of con-*
6 *tents in section 1 of such Act is amended by striking*
7 *the item relating to section 111 and inserting the fol-*
8 *lowing new items:*

 “Sec. 111. Requirement to provide notice of plan fee information to plan admin-
 istrators.

 “Sec. 112. Requirement to provide notice to participants of plan fee information.

 “Sec. 113. Repeal and effective date.”.

9 (b) *QUARTERLY BENEFIT STATEMENTS.*—*Section 105*
10 *of such Act (29 U.S.C. 1025) is amended—*

11 (1) *in subsection (a)(2)—*

12 (A) *by redesignating subparagraph (C) as*
13 *subparagraph (G);*

14 (B) *in subparagraph (B)(ii)—*

15 (i) *in subclause (II), by striking “di-*
16 *versified, and” and inserting “diversified,”;*

17 (ii) *in subclause (III) by striking the*
18 *period and inserting “, and”;* and

19 (iii) *by adding after subclause (III) the*
20 *following new subclause:*

21 “(IV) *with respect to the portion*
22 *of a participant’s account for which*
23 *the participant has the right to direct*

1 *the investment of assets, the informa-*
2 *tion described in subparagraph (C).”;*
3 *and*

4 *(C) by inserting after subparagraph (B) the*
5 *following new subparagraphs:*

6 “(C) *QUARTERLY BENEFIT STATEMENTS.—*
7 *The plan administrator shall provide to each*
8 *participant and beneficiary, at least once each*
9 *calendar quarter, an explanation describing the*
10 *investment options in which the participant’s or*
11 *beneficiary’s account is invested as of the last*
12 *day of the preceding quarter. Such explanation*
13 *shall provide, to the extent applicable, the fol-*
14 *lowing for the preceding quarter:*

15 “(i) *As of the last day of the quarter,*
16 *a statement of the different asset classes that*
17 *the participant’s or beneficiary’s account is*
18 *invested in and the percentage of the ac-*
19 *count allocated to each asset class.*

20 “(ii) *A statement of the starting and*
21 *ending balance of the participant’s or bene-*
22 *ficiary’s account for such quarter.*

23 “(iii) *A statement of the total contribu-*
24 *tions made to the participant’s or bene-*

1 *beneficiary's account during the quarter and a*
2 *separate statement of—*

3 “(I) *the amount of such contribu-*
4 *tions, and the total amount of any re-*
5 *storative payments, which were made*
6 *by the employer during the quarter,*
7 *and*

8 “(II) *the amount of such contribu-*
9 *tions which were made by the em-*
10 *ployee.*

11 “(iv) *A statement of the total fees and*
12 *expenses which were directly deducted from*
13 *the participant's or beneficiary's account*
14 *during the quarter and an itemization of*
15 *such fees and expenses.*

16 “(v) *A statement of the net returns for*
17 *the year to date, expressed as a percentage,*
18 *and a statement as to whether the net re-*
19 *turns include amounts described in clause*
20 *(iv).*

21 “(vi) *With respect to each investment*
22 *option in which the participant or bene-*
23 *ficiary was invested as of the last day of the*
24 *quarter, the following:*

1 “(I) A statement of the percentage
2 of the participant’s or beneficiary’s ac-
3 count that is invested in such option as
4 of the last day of such quarter.

5 “(II) A statement of the starting
6 and ending balance of the participant’s
7 or beneficiary’s account that is in-
8 vested in such option for such quarter.

9 “(III) A statement of the annual
10 operating expenses of the investment
11 option.

12 “(IV) A statement of whether the
13 disclosure described in clause (iv) in-
14 cludes the annual operating expenses of
15 the investment options of the partici-
16 pant or beneficiary.

17 “(vii) The statement described in sec-
18 tion 112(a)(1)(B)(i)(VI).

19 “(viii) A statement regarding how a
20 participant or beneficiary may access the
21 information required to be disclosed under
22 section 112(a)(1).

23 “(D) MODEL EXPLANATIONS.—The Sec-
24 retary shall prescribe one or more model expla-

1 *nations that may be used for purposes of satis-*
2 *fying the requirements of subparagraph (C).*

3 *“(E) DETERMINATION OF EXPENSES.—For*
4 *purposes of subparagraph (C)(vi)(III)—*

5 *“(i) Expenses may be expressed as a*
6 *dollar amount or as a percentage of assets*
7 *(or a combination thereof).*

8 *“(ii) The plan administrator may pro-*
9 *vide disclosure of the expenses for the quar-*
10 *ter or may provide a reasonable and rep-*
11 *resentative estimate of such expenses and*
12 *shall indicate any such estimate as being an*
13 *estimate. Any such estimate shall be based*
14 *on reasonable assumptions stated together*
15 *with such estimate.*

16 *“(iii) To the extent that estimated ex-*
17 *penses are expressed as a percentage of as-*
18 *sets, the disclosure shall also include one of*
19 *the following, stated in dollar amounts:*

20 *“(I) an estimate of the expenses*
21 *for the quarter based on the amount*
22 *invested in the option; or*

23 *“(II) an example describing the*
24 *expenses that would apply during the*

1 *quarter with respect to a hypothetical*
2 *\$10,000 investment in the option.*

3 *“(F) ANNUAL COMPLIANCE FOR SMALL*
4 *PLANS.—A plan that has fewer than 100 partici-*
5 *pants and beneficiaries as of the first day of the*
6 *plan year may provide the explanation described*
7 *in subparagraph (C) on an annual rather than*
8 *a quarterly basis.”.*

9 *(c) ASSISTANCE FROM THE DEPARTMENT OF*
10 *LABOR.—Section 105 of such Act (29 U.S.C. 1025) is*
11 *amended by adding at the end the following new sub-*
12 *sections:*

13 *“(d) ASSISTANCE TO SMALL EMPLOYERS.—The Sec-*
14 *retary shall make available to employers with 100 or fewer*
15 *employees—*

16 *“(1) educational and compliance materials de-*
17 *signed to assist such employers in selecting and moni-*
18 *toring service providers for individual account plans*
19 *which permit a participant or beneficiary to exercise*
20 *control over the assets in the account of the partici-*
21 *part or beneficiary, investment options under such*
22 *plans, and charges relating to such options, and*

23 *“(2) services designed to assist such employers in*
24 *finding and understanding affordable investment op-*
25 *tions for such plans and in comparing the investment*

1 performance of, and charges for, such options on an
2 ongoing basis against appropriate benchmarks or
3 other appropriate measures.

4 “(e) ASSISTANCE TO PLAN SPONSORS AND PLAN PAR-
5 TICIPANTS AND BENEFICIARIES.—The Secretary shall pro-
6 vide plan administrators and plan sponsors of individual
7 account plans and participants and beneficiaries under
8 such plans assistance with any questions or problems re-
9 garding compliance with the requirements of subparagraphs
10 (B)(ii)(IV) and (C) of subsection (a)(2) and section 112.”.

11 (d) ENFORCEMENT.—

12 (1) PENALTIES.—Section 502 of such Act (29
13 U.S.C. 1132) is amended—

14 (A) in subsection (a)(6), by striking “under
15 paragraph (2)” and all that follows through
16 “subsection (c)” and inserting “under paragraph
17 (2), (4), (5), (6), (7), (8), (9), (10), (11), or (12)
18 of subsection (c)”; and

19 (B) in subsection (c), by redesignating the
20 second paragraph (10) as paragraph (13), and
21 by inserting after the first paragraph (10) the
22 following new paragraphs:

23 “(11)(A) In the case of any failure by a service pro-
24 vider (as defined in section 111(f)(1)) to provide a state-
25 ment in violation of section 111, the service provider may

1 *be assessed by the Secretary a civil penalty of up to \$1,000*
2 *for each day in the noncompliance period.*

3 “(B) *For purposes of subparagraph (A), the non-*
4 *compliance period with respect to the failure to provide any*
5 *statement is the period beginning on the date that such*
6 *statement was required to be provided and ending on the*
7 *date that such statement is provided or the failure is other-*
8 *wise corrected.*

9 “(C)(i) *The total amount of a penalty assessed under*
10 *this paragraph on any service provider with respect to any*
11 *individual account plan for any plan year shall not exceed*
12 *an amount equal to the lesser of—*

13 “(I) *10 percent of the assets of the plan, deter-*
14 *mined as of the first day of such plan year, or*

15 “(II) *\$1,000,000.*

16 “(ii) *No penalty shall be imposed by subparagraph (A)*
17 *on any failure if—*

18 “(I) *the service provider subject to liability for*
19 *the penalty under subparagraph (A) exercised reason-*
20 *able diligence to meet the requirement with respect to*
21 *which the failure relates, and*

22 “(II) *such service provider provides the informa-*
23 *tion required under section 111 during the 30-day pe-*
24 *riod beginning on the date such person knew, or exer-*

1 *cising reasonable diligence would have known, that*
2 *such failure existed.*

3 *“(iii) In the case of a failure which is due to reasonable*
4 *cause and not to willful neglect, the Secretary may waive*
5 *part or all of the penalty under subparagraph (A) to the*
6 *extent that the payment of such penalty would be excessive*
7 *or otherwise inequitable relative to the failure involved.*

8 *“(D) The penalty imposed under this paragraph with*
9 *respect to any failure shall be reduced by the amount of*
10 *any tax imposed on such person with respect to such failure*
11 *under section 4980J of the Internal Revenue Code of 1986.*

12 *“(12)(A) Any plan administrator with respect to a*
13 *plan who fails or refuses to provide a notice, explanation,*
14 *or statement to participants and beneficiaries in accord-*
15 *ance with subparagraphs (B)(ii)(IV) and (C) of section*
16 *105(a)(2) and section 112 may be assessed by the Secretary*
17 *a civil penalty of up to \$110 for each day in the noncompli-*
18 *ance period.*

19 *“(B) For purposes of subparagraph (A), the non-*
20 *compliance period with respect to the failure to provide any*
21 *notice, explanation, or statement referred to in subpara-*
22 *graph (B)(ii)(IV) or (C) of section 105(a)(2) or section 112*
23 *with respect to any participant or beneficiary is the period*
24 *beginning on the date that such notice, explanation, or*
25 *statement was required to be provided and ending on the*

1 *date that such notice, explanation, or statement is provided*
2 *or the failure is otherwise corrected.*

3 “(C)(i) *The total amount of penalty assessed under this*
4 *paragraph with respect to any plan for any plan year shall*
5 *not exceed an amount equal to the lesser of—*

6 “(I) *10 percent of the assets of the plan, deter-*
7 *mined as of the first day of such plan year, or*

8 “(II) *\$500,000.*

9 “(ii) *No penalty shall be imposed under subparagraph*
10 *(A) on any failure to meet the requirements of subpara-*
11 *graphs (B)(ii)(IV) and (C) of section 105(a)(2) and section*
12 *112 if—*

13 “(I) *any person subject to liability for the pen-*
14 *alty under subparagraph (A) exercised reasonable*
15 *diligence to meet such requirements, and*

16 “(II) *such person provides the notice, expla-*
17 *nation, or statement to which the failure relates dur-*
18 *ing the 30-day period beginning on the date such per-*
19 *son knew, or exercising reasonable diligence would*
20 *have known, that such failure existed.*

21 “(iii) *In the case of a failure which is due to reasonable*
22 *cause and not to willful neglect, the Secretary shall waive*
23 *part or all of the penalty under subparagraph (A) to the*
24 *extent that the payment of such penalty would be excessive*
25 *or otherwise inequitable relative to the failure involved.*

1 “(iv) *The penalty imposed under this paragraph with*
2 *respect to any failure shall be reduced by the amount of*
3 *any tax imposed on such person with respect to such failure*
4 *under section 4980K of the Internal Revenue Code of*
5 *1986.”.*

6 (2) *ENFORCEMENT COORDINATION AND REVIEW*
7 *BY THE DEPARTMENT OF LABOR.—Section 502 of*
8 *such Act (29 U.S.C. 1132) is amended by adding at*
9 *the end the following new subsection:*

10 “(n) *ENFORCEMENT COORDINATION OF CERTAIN DIS-*
11 *CLOSURE REQUIREMENTS RELATING TO INDIVIDUAL AC-*
12 *COUNT PLANS AND REVIEW BY THE DEPARTMENT OF*
13 *LABOR.—*

14 “(1) *NOTIFICATION AND ACTION RELATING TO*
15 *SERVICE PROVIDERS.—The Secretary shall notify the*
16 *applicable regulatory authority in any case in which*
17 *the Secretary determines that a service provider is en-*
18 *gaged in a pattern or practice that precludes compli-*
19 *ance by plan administrators with subparagraphs*
20 *(B)(ii)(IV) and (C) of section 105(a)(2) and section*
21 *112. The Secretary shall, in consultation with the ap-*
22 *plicable authority, take such timely enforcement ac-*
23 *tion under this title as is necessary to assure that*
24 *such pattern or practice ceases and desists and assess*
25 *any appropriate penalties.*

1 “(2) *ANNUAL AUDIT OF REPRESENTATIVE SAM-*
2 *PLING OF INDIVIDUAL ACCOUNT PLANS.*—*The Sec-*
3 *retary shall annually audit a representative sampling*
4 *of individual account plans covered by this title to de-*
5 *termine compliance with the requirements of subpara-*
6 *graphs (B)(i)(IV) and (C) of section 105(a)(2), sec-*
7 *tion 111, and section 112. The Secretary shall annu-*
8 *ally report the results of such audit and any related*
9 *recommendations of the Secretary to the Committee*
10 *on Education and Labor of the House of Representa-*
11 *tives and the Committee on Health, Education,*
12 *Labor, and Pensions of the Senate.”.*

13 *(e) REVIEW AND REPORT TO THE CONGRESS BY SEC-*
14 *RETARY OF LABOR RELATING TO REPORTING AND DISCLO-*
15 *SURE REQUIREMENTS.*—

16 (1) *STUDY.*—*As soon as practicable after the*
17 *date of the enactment of this Act, the Secretary of*
18 *Labor shall review the reporting and disclosure re-*
19 *quirements of part 1 of subtitle B of title I of the Em-*
20 *ployee Retirement Income Security Act of 1974 and*
21 *related provisions of the Pension Protection Act of*
22 *2006.*

23 (2) *REPORT.*—*Not later than 18 months after the*
24 *date of the enactment of this Act, the Secretary of*
25 *Labor, in consultation with the Secretary of the*

1 *Treasury, shall make such recommendations as the*
 2 *Secretary of Labor considers appropriate to the ap-*
 3 *propriate committees of the Congress to consolidate,*
 4 *simplify, standardize, and improve the applicable re-*
 5 *porting and disclosure requirements so as to simplify*
 6 *reporting for employee pension benefit plans and en-*
 7 *sure that needed understandable information is pro-*
 8 *vided to participants and beneficiaries of such plans.*

9 **SEC. 323. AMENDMENTS TO THE INTERNAL REVENUE CODE**
 10 **OF 1986.**

11 *(a) IN GENERAL.—Chapter 43 of the Internal Revenue*
 12 *Code of 1986 (relating to qualified pension, etc. plans) is*
 13 *amended by adding at the end the following new sections:*

14 **“SEC. 4980J. FAILURE TO PROVIDE NOTICE OF PLAN FEE IN-**
 15 **FORMATION TO PLAN ADMINISTRATORS.**

16 **“(a) IMPOSITION OF TAX.—**

17 **“(1) IN GENERAL.—***There is hereby imposed a*
 18 *tax on each failure of a service provider to meet the*
 19 *requirements of paragraph (2) with respect to any*
 20 *applicable defined contribution plan.*

21 **“(2) FAILURES DESCRIBED.—***The failures de-*
 22 *scribed in this paragraph are—*

23 **“(A) any failure to provide an initial state-**
 24 *ment described in subsection (d),*

1 “(B) any failure to provide an annual
2 statement described in subsection (e), and

3 “(C) any failure to provide a material
4 change statement described in subsection (f).

5 “(b) AMOUNT OF TAX.—

6 “(1) IN GENERAL.—The amount of the tax im-
7 posed by subsection (a) on any failure shall be \$1,000
8 for each day in the noncompliance period.

9 “(2) NONCOMPLIANCE PERIOD.—For purposes of
10 paragraph (1), the noncompliance period with respect
11 to the failure to provide any statement is the period
12 beginning on the date that such statement was re-
13 quired to be provided and ending on the date that
14 such statement is provided or the failure is otherwise
15 corrected.

16 “(c) LIMITATIONS.—

17 “(1) AGGREGATE LIMITATION.—The total
18 amount of tax imposed by this section on any service
19 provider with respect to any applicable defined con-
20 tribution plan for any plan year shall not exceed an
21 amount equal to the lesser of—

22 “(A) 10 percent of the assets of the plan, de-
23 termined as of the first day of such plan year,
24 or

25 “(B) \$1,000,000.

1 “(2) *TAX NOT TO APPLY TO FAILURES COR-*
2 *RECTED WITHIN 30 DAYS.*—No tax shall be imposed
3 by subsection (a) on any failure if—

4 “(A) *the service provider subject to liability*
5 *for the tax under subsection (a) exercised reason-*
6 *able diligence to meet the requirement with re-*
7 *spect to which the failure relates, and*

8 “(B) *such service provider provides the in-*
9 *formation required under subsection (a) during*
10 *the 30-day period beginning on the date such*
11 *person knew, or exercising reasonable diligence*
12 *would have known, that such failure existed.*

13 “(3) *WAIVER BY SECRETARY.*—In the case of a
14 failure which is due to reasonable cause and not to
15 willful neglect, the Secretary may waive part or all
16 of the tax imposed by subsection (a) to the extent that
17 the payment of such tax would be excessive or other-
18 wise inequitable relative to the failure involved.

19 “(d) *INITIAL STATEMENT OF SERVICES PROVIDED AND*
20 *REVENUES RECEIVED.*—

21 “(1) *IN GENERAL.*—Before entering into any
22 contract or arrangement to provide services to an ap-
23 plicable defined contribution plan, the service pro-
24 vider shall provide to the plan administrator a single
25 written statement which includes, with respect to the

1 *first plan year covered under such contract or ar-*
2 *rangement, the following:*

3 *“(A) A detailed description of the services*
4 *which will be provided to the plan by the service*
5 *provider, the amount of total expected annual*
6 *revenue with respect to such services, the manner*
7 *in which such revenue will be collected, and the*
8 *extent to which such revenue varies between spe-*
9 *cific investment options.*

10 *“(B)(i) In the case of a service provider who*
11 *is providing recordkeeping services with respect*
12 *to any investment option, such information as is*
13 *necessary for the plan administrator to satisfy*
14 *the requirements of paragraphs (1), (2) and (4)*
15 *of section 4980K(e) with respect to such option,*
16 *including specifying the method used by the serv-*
17 *ice provider in disclosing or estimating expenses*
18 *under subparagraphs (A)(iv) and (C) of such*
19 *paragraph (2).*

20 *“(i) To the extent provided in regulations*
21 *issued by the Secretary of Labor, clause (i) shall*
22 *not apply in the case of a service provider de-*
23 *scribed in such clause if the service provider re-*
24 *ceives a written notification from the plan ad-*
25 *ministrator that the information described in*

1 *such clause in connection with the investment*
2 *option is provided by another service provider*
3 *pursuant to a contract or arrangement to pro-*
4 *vide services to the plan.*

5 *“(C) A statement indicating—*

6 *“(i) the identity of any investment op-*
7 *tions offered under the plan with respect to*
8 *which the service provider provides substan-*
9 *tial investment, trustee, custodial, or ad-*
10 *ministrative services, and*

11 *“(ii) in the case of any investment op-*
12 *tion, whether the service provider expects to*
13 *receive any component of total expected an-*
14 *nuual revenue described in paragraph*
15 *(2)(A)(ii)(II) with respect to such option*
16 *and the amount of any such component.*

17 *“(D) The portion of total expected annual*
18 *revenue which is properly allocable to each of the*
19 *following:*

20 *“(i) Administration and recordkeeping.*

21 *“(ii) Investment management.*

22 *“(iii) Other services or amounts not*
23 *described in clause (i) or (ii).*

24 *“(2) DEFINITION OF TOTAL EXPECTED ANNUAL*
25 *REVENUE.—For purposes of this section—*

1 “(A) *IN GENERAL.*—*The term ‘total expected*
2 *annual revenue’ means, with respect to any plan*
3 *year—*

4 “(i) *any amount expected to be re-*
5 *ceived during such plan year from the plan*
6 *(including amounts paid from participant*
7 *accounts), any participant or beneficiary,*
8 *or any plan sponsor in connection with the*
9 *contract or arrangement referred to in*
10 *paragraph (1), and*

11 “(ii) *any amount not taken into ac-*
12 *count under clause (i) which is expected to*
13 *be received during such plan year by the*
14 *service provider in connection with—*

15 “(I) *plan administration, record-*
16 *keeping, consulting, management, or*
17 *investment or other service activities*
18 *undertaken by the service provider*
19 *with respect to the plan, or*

20 “(II) *plan administration, record-*
21 *keeping, consulting, management, or*
22 *investment or other service activities*
23 *undertaken by any other person with*
24 *respect to the plan.*

1 “(B) *EXPRESSED AS DOLLAR AMOUNT OR*
2 *PERCENTAGE OF ASSETS.—Total expected an-*
3 *annual revenue and any amount indicated under*
4 *paragraph (1)(C)(ii) may be expressed as a dol-*
5 *lar amount or as a percentage of assets (or a*
6 *combination thereof), as appropriate. To the ex-*
7 *tent that total expected annual revenue is ex-*
8 *pressed as a percentage of assets, such percentage*
9 *shall be properly allocated among clauses (i),*
10 *(ii), and (iii) of paragraph (1)(D).*

11 “(C) *PROVISION OF FEE SCHEDULE FOR*
12 *CERTAIN PARTICIPANT INITIATED TRANS-*
13 *ACTIONS.—In the case of amounts expected to be*
14 *received from participants or beneficiaries under*
15 *the plan (or from the account of a participant*
16 *or beneficiary) as a fee or charge in connection*
17 *with a transaction initiated by the participant*
18 *(other than loads, commissions, brokerage fees,*
19 *and other investment related transactions)—*

20 “(i) *such amounts shall not be taken*
21 *into account in determining total expected*
22 *annual revenue, and*

23 “(ii) *the service provider shall provide*
24 *to the plan administrator, as part of the*
25 *statement referred to in paragraph (1), a fee*

1 *schedule which describes each such fee or*
2 *charge, the amount thereof, and the manner*
3 *in which such amount is collected.*

4 “(D) *ESTIMATIONS.*—*In determining under*
5 *this subsection any amount which is expected to*
6 *be received by the service provider, the service*
7 *provider shall provide a reasonable estimate of*
8 *such amount and shall indicate in the statement*
9 *referred to in paragraph (1) whether such*
10 *amount disclosed is an estimate. Any such esti-*
11 *mate shall be based on reasonable assumptions*
12 *specified in such statement.*

13 “(3) *ALLOCATION RULES.*—*The Secretary of*
14 *Labor shall provide rules for defining total expected*
15 *annual revenue and for the appropriate and con-*
16 *sistent allocation of total expected annual revenue*
17 *among clauses (i), (ii), and (iii) of paragraph (1)(D),*
18 *except that the entire amount of such revenue shall be*
19 *allocated among such clauses and no amount may be*
20 *taken into account under more than one clause.*

21 “(4) *DISCLOSURE OF DIFFERENT PRICING OF IN-*
22 *VESTMENT OPTIONS.*—*In the case of investment op-*
23 *tions with more than one share class or price level,*
24 *the Secretary of Labor shall prescribe regulations for*
25 *the disclosure of the different share classes or price*

1 *levels available as part of the statement in paragraph*
2 *(1). Such regulations shall provide guidance with re-*
3 *spect to the disclosure of the basis for qualifying for*
4 *such share classes or price levels, which may include*
5 *amounts invested, number of participants, or other*
6 *factors.*

7 *“(5) DISCLOSURE OF INVESTMENT TRANSACTION*
8 *COSTS.—To the extent provided in regulations issued*
9 *by the Secretary of Labor, a service provider shall*
10 *separately disclose the transaction costs (including*
11 *sales commissions) for each investment option for the*
12 *preceding year or the plan’s allocable share of such*
13 *costs for the preceding year.*

14 *“(e) ANNUAL STATEMENTS.—With respect to each plan*
15 *year after the plan year covered by the statement described*
16 *in subsection (d), the service provider shall provide the plan*
17 *administrator a single written statement which includes the*
18 *information described in subsection (d) with respect to such*
19 *subsequent plan year.*

20 *“(f) MATERIAL CHANGE STATEMENTS.—In the case of*
21 *any event or other change during a plan year which causes*
22 *the information included in any statement described in sub-*
23 *section (d) or (e) with respect to such plan year to become*
24 *materially incorrect, the service provider shall provide the*
25 *plan administrator a written statement providing the cor-*

1 *rected information not later than 30 days after the service*
2 *provider knows, or exercising reasonable diligence would*
3 *have known, of such event or other change.*

4 “(g) *TIME AND MANNER OF PROVIDING STATEMENT*
5 *AND OTHER MATERIALS.—The statement referred to in sub-*
6 *sections (d)(1) and (e) shall be made at such time and in*
7 *such manner as the Secretary of Labor may provide. Other*
8 *materials required to be provided under this section shall*
9 *be provided in such manner as such Secretary may provide.*
10 *All information included in such statements and other ma-*
11 *terials shall be presented in a manner which is easily un-*
12 *derstood by the typical plan administrator.*

13 “(h) *EXCEPTION FOR SMALL SERVICE PROVIDERS.—*
14 *The requirements of this section shall not apply with respect*
15 *to any contract or arrangement for services provided with*
16 *respect to an individual account plan for any plan year*
17 *if—*

18 “(1) *the total annual revenue expected by the*
19 *service provider to be received with respect to the plan*
20 *for such plan year is less than \$5,000, and*

21 “(2) *the service provider provides a written*
22 *statement to the plan administrator that the total an-*
23 *annual revenue expected by the service provider to be re-*
24 *ceived with respect to the plan is less than \$5,000.*

1 *Service providers who expect to receive de minimis annual*
2 *revenue from the plan need not provide the written state-*
3 *ment described in paragraph (2). The Secretary of Labor*
4 *may by regulation or other guidance adjust the dollar*
5 *amount specified in this subsection.*

6 “(i) *DEFINITIONS.—For purposes of this section—*

7 “(1) *SERVICE PROVIDER.—*

8 “(A) *IN GENERAL.—The term ‘service pro-*
9 *vider’ includes any person providing adminis-*
10 *tration, recordkeeping, consulting, investment*
11 *management services, or investment advice to an*
12 *applicable defined contribution plan under a*
13 *contract or arrangement.*

14 “(B) *CONTROLLED GROUPS TREATED AS*
15 *ONE SERVICE PROVIDER.—All persons which*
16 *would be treated as a single employer under sub-*
17 *section (b) or (c) of section 414 if section*
18 *1563(a)(1) were applied—*

19 “(i) *except as provided by subpara-*
20 *graph (B), by substituting ‘more than 50*
21 *percent’ for ‘at least 80 percent’ each place*
22 *it appears therein, or*

23 “(ii) *for purposes of subsection*
24 *(d)(1)(C)(i), by substituting ‘at least 20*

1 percent’ for ‘at least 80 percent’ each place
2 it appears therein,
3 shall be treated as one person for purposes of this
4 section.

5 “(2) *APPLICABLE DEFINED CONTRIBUTION*
6 *PLAN.*—The term ‘applicable defined contribution
7 plan’ means any defined contribution plan described
8 in clauses (iii) through (vi) of section 402(c)(8)(B).

9 “(3) *PLAN ADMINISTRATOR.*—The term ‘plan ad-
10 ministrator’ has the meaning given such term by sec-
11 tion 414(g).

12 **“SEC. 4980K. FAILURE TO PROVIDE NOTICE TO PARTICI-**
13 **PANTS OF PLAN FEE INFORMATION.**

14 “(a) *IMPOSITION OF TAX.*—

15 “(1) *IN GENERAL.*—There is hereby imposed a
16 tax on each failure of a plan administrator of an ap-
17 plicable defined contribution plan to meet the require-
18 ments of paragraph (2) with respect to any partici-
19 pant or beneficiary.

20 “(2) *FAILURES DESCRIBED.*—The failures de-
21 scribed in this paragraph are—

22 “(A) any failure to provide an advance no-
23 tice of available investment options described in
24 subsection (e)(1),

1 “(B) any failure to provide an account ex-
2 planation described in subsection (e)(2),

3 “(C) any failure to provide a service pro-
4 vider statement referred to in subsection (e)(3),
5 and

6 “(D) any failure to provide a notice of ma-
7 terial change described in subsection (e)(4).

8 “(b) AMOUNT OF TAX.—

9 “(1) IN GENERAL.—The amount of the tax im-
10 posed by subsection (a) on any failure with respect to
11 any participant or beneficiary shall be \$100 for each
12 day in the noncompliance period.

13 “(2) NONCOMPLIANCE PERIOD.—For purposes of
14 paragraph (1), the noncompliance period with respect
15 to the failure to provide any notice, explanation, or
16 statement referred to in subsection (a)(2) with respect
17 to any participant or beneficiary is the period begin-
18 ning on the date that such notice, explanation, or
19 statement was required to be provided and ending on
20 the date that such notice, explanation, or statement is
21 provided or the failure is otherwise corrected.

22 “(c) LIMITATIONS ON AMOUNT OF TAX.—

23 “(1) AGGREGATE LIMITATION.—The total
24 amount of tax imposed by this section with respect to

1 *any plan for any plan year shall not exceed an*
2 *amount equal to the lesser of—*

3 “(A) 10 percent of the assets of the plan, de-
4 *termined as of the first day of such plan year,*
5 *or*

6 “(B) \$500,000.

7 “(2) *TAX NOT TO APPLY TO FAILURES COR-*
8 *RECTED WITHIN 30 DAYS.—No tax shall be imposed*
9 *by subsection (a) on any failure if—*

10 “(A) *any person subject to liability for the*
11 *tax under subsection (a) exercised reasonable*
12 *diligence to meet the requirements of subsection*
13 *(e), and*

14 “(B) *such person provides the notice, expla-*
15 *nation, or statement to which the failure relates*
16 *during the 30-day period beginning on the date*
17 *such person knew, or exercising reasonable dili-*
18 *gence would have known, that such failure ex-*
19 *isted.*

20 “(3) *WAIVER BY SECRETARY.—In the case of a*
21 *failure which is due to reasonable cause and not to*
22 *willful neglect, the Secretary shall waive part or all*
23 *of the tax imposed by subsection (a) to the extent that*
24 *the payment of such tax would be excessive or other-*
25 *wise inequitable relative to the failure involved.*

1 “(d) *LIABILITY FOR TAX.*—*The plan administrator*
2 *shall be liable for the tax imposed by subsection (a).*

3 “(e) *DISCLOSURES TO PARTICIPANTS AND BENE-*
4 *FICIARIES.*—

5 “(1) *ADVANCE NOTICE OF AVAILABLE INVEST-*
6 *MENT OPTIONS.*—

7 “(A) *IN GENERAL.*—*The plan administrator*
8 *of an applicable defined contribution plan shall*
9 *provide to the participant or beneficiary notice*
10 *of the investment options available under the*
11 *plan before—*

12 “(i) *the earliest date provided for*
13 *under the plan for the participant’s initial*
14 *investment of any contribution made on be-*
15 *half of such participant, and*

16 “(ii) *the effective date of any change in*
17 *the list of investment options available*
18 *under the plan, unless such advance notice*
19 *is impracticable, and in such case, as soon*
20 *as is practicable.*

21 “(B) *INFORMATION INCLUDED IN NOTICE.*—
22 *The notice required under subparagraph (A)*
23 *shall—*

24 “(i) *set forth, with respect to each*
25 *available investment option—*

1 “(I) the name of the option,

2 “(II) a general description of the
3 option’s investment objectives and
4 principal investment strategies, prin-
5 cipal risk and return characteristics,
6 and the name of the option’s invest-
7 ment manager,

8 “(III) whether the investment op-
9 tion is designed to be a comprehensive,
10 stand-alone investment for retirement
11 that provides varying degrees of long-
12 term appreciation and capital preser-
13 vation through a mix of equity and
14 fixed income exposures,

15 “(IV) the extent to which the in-
16 vestment option is actively managed or
17 passively managed in relation to an
18 index and the difference between active
19 management and passive management,

20 “(V) where, and the manner in
21 which, additional plan-specific, option-
22 specific, and generally available invest-
23 ment information may be obtained,
24 and

1 “(VI) a statement explaining that
2 investment options should not be evalu-
3 ated solely on the basis of the charges
4 for each option but should also be
5 based on consideration of other key fac-
6 tors, including the risk level of the op-
7 tion, the investment objectives of the
8 option, historical returns of the option,
9 and the participant’s personal invest-
10 ment objectives,

11 “(ii) include a statement of the right
12 under paragraph (3) of participants and
13 beneficiaries to request, and a description of
14 how participant or beneficiary may request,
15 a copy of the statements received by the
16 plan administrator under section 4980J
17 with respect to the plan, and

18 “(iii) include the plan fee comparison
19 chart described in subparagraph (C).

20 “(C) PLAN FEE COMPARISON CHART.—

21 “(i) IN GENERAL.—

22 “(I) IN GENERAL.—The notice
23 provided under this paragraph shall
24 include a plan fee comparison chart
25 consisting of a comparison of the serv-

1 *ice and investment charges that will or*
2 *could be assessed against the account of*
3 *the participant or beneficiary with re-*
4 *spect to the plan year.*

5 *“(II) EXPRESSED AS DOLLAR*
6 *AMOUNT OR FORMULA.—For purposes*
7 *of this subparagraph, such charges*
8 *shall be provided in the form of a dol-*
9 *lar amount or as a formula (such as a*
10 *percentage of assets), as appropriate.*

11 *“(ii) CATEGORIZATION OF CHARGES.—*
12 *The plan fee comparison chart shall provide*
13 *information in relation to the following cat-*
14 *egories of charges that will or could be as-*
15 *sessed against the account of the participant*
16 *or beneficiary:*

17 *“(I) ASSET-BASED CHARGES SPE-*
18 *CIFIC TO INVESTMENT.—Charges that*
19 *vary depending on the investment op-*
20 *tions selected by the participant or*
21 *beneficiary, including the annual oper-*
22 *ating expenses of the investment option*
23 *and investment-specific asset-based*
24 *charges (such as loads, commissions,*
25 *brokerage fees, exchange fees, redemp-*

1 *tion fees, and surrender charges). Ex-*
2 *cept as provided by the Secretary of*
3 *Labor in regulations under this sec-*
4 *tion, the information relating to such*
5 *charges shall include a statement not-*
6 *ing any charges for 1 or more invest-*
7 *ment options which pay for services*
8 *other than investment management.*

9 *“(II) RECURRING ASSET-BASED*
10 *CHARGES NOT SPECIFIC TO INVEST-*
11 *MENT.—Charges that are assessed as a*
12 *percentage of the total assets in the ac-*
13 *count of the participant or beneficiary,*
14 *regardless of the investment option se-*
15 *lected.*

16 *“(III) ADMINISTRATIVE AND*
17 *TRANSACTION-BASED CHARGES.—Ad-*
18 *ministration and transaction-based*
19 *charges, including fees charged to par-*
20 *ticipants to cover plan administration,*
21 *compliance, and recordkeeping costs,*
22 *plan loan origination fees, possible re-*
23 *demption fees, and possible surrender*
24 *charges, that are not assessed as a per-*
25 *centage of the total assets in the ac-*

1 *count and are either automatically de-*
2 *ducted each year or result from certain*
3 *transactions engaged in by the partici-*
4 *pant or beneficiary.*

5 “(IV) *OTHER CHARGES.*—*Any*
6 *other charges which may be deducted*
7 *from participants’ or beneficiaries’ ac-*
8 *counts and which are not described in*
9 *subclauses (I), (II), and (III).*

10 “(iii) *FEEES AND HISTORICAL RE-*
11 *TURNS.*—*The plan fee comparison chart*
12 *shall include—*

13 “(I) *the historical returns, net of*
14 *fees and expenses, for the previous*
15 *year, 5 years, and 10 years (or for the*
16 *period since inception, if shorter) with*
17 *respect to such investment option, and*

18 “(II) *the historical returns of an*
19 *appropriate benchmark, index, or other*
20 *point of comparison for each such pe-*
21 *riod.*

22 “(D) *MODEL NOTICES.*—*The Secretary of*
23 *Labor shall prescribe one or more model notices*
24 *that may be used for purposes of satisfying the*

1 *requirements of this paragraph, including model*
2 *plan fee comparison charts.*

3 *“(E) ESTIMATIONS.—For purposes of pro-*
4 *viding the notice required under this paragraph,*
5 *the plan administrator may provide a reasonable*
6 *and representative estimate for any charges or*
7 *percentages disclosed under subparagraph (B) or*
8 *(C) and shall indicate whether the amount of*
9 *any such charges or percentages disclosed is an*
10 *estimate.*

11 *“(2) QUARTERLY BENEFIT STATEMENT.—*

12 *“(A) REQUIREMENTS.—The plan adminis-*
13 *trator shall provide to each participant and ben-*
14 *eficiary, at least once each calendar quarter, an*
15 *explanation describing the investment options in*
16 *which the participant’s or beneficiary’s account*
17 *is invested as of the last day of the preceding*
18 *quarter. Such explanation shall provide, to the*
19 *extent applicable, the following for the preceding*
20 *quarter:*

21 *“(i) As of the last day of the quarter,*
22 *a statement of the different asset classes that*
23 *the participant’s or beneficiary’s account is*
24 *invested in and the percentage of the ac-*
25 *count allocated to each asset class.*

1 “(ii) A statement of the starting and
2 ending balance of the participant’s or bene-
3 ficiary’s account for such quarter.

4 “(iii) A statement of the total contribu-
5 tions made to the participant’s or bene-
6 ficiary’s account during the quarter and a
7 separate statement of—

8 “(I) the amount of such contribu-
9 tions, and the total amount of any re-
10 storative payments, which were made
11 by the employer during the quarter,
12 and

13 “(II) the amount of such contribu-
14 tions which were made by the em-
15 ployee.

16 “(iv) A statement of the total fees and
17 expenses which were directly deducted from
18 the participant’s or beneficiary’s account
19 during the quarter and an itemization of
20 such fees and expenses.

21 “(v) A statement of the net returns for
22 the year to date, expressed as a percentage,
23 and a statement as to whether the net re-
24 turns include amounts described in clause
25 (iv).

1 “(vi) *With respect to each investment*
2 *option in which the participant or bene-*
3 *ficiary was invested as of the last day of the*
4 *quarter, the following:*

5 “(I) *A statement of the percentage*
6 *of the participant’s or beneficiary’s ac-*
7 *count that is invested in such option as*
8 *of the last day of such quarter.*

9 “(II) *A statement of the starting*
10 *and ending balance of the participant’s*
11 *or beneficiary’s account that is in-*
12 *vested in such option for such quarter.*

13 “(III) *A statement of the annual*
14 *operating expenses of the investment*
15 *option.*

16 “(IV) *A statement of whether the*
17 *disclosure described in clause (iv) in-*
18 *cludes the annual operating expenses of*
19 *the investment options of the partici-*
20 *pant or beneficiary.*

21 “(vii) *The statement described in para-*
22 *graph (1)(B)(i)(VI).*

23 “(viii) *A statement regarding how a*
24 *participant or beneficiary may access the*

1 *information required to be disclosed under*
2 *paragraph (1).*

3 “(B) *MODEL EXPLANATIONS.—The Sec-*
4 *retary of Labor shall prescribe one or more*
5 *model explanations that may be used for pur-*
6 *poses of satisfying the requirements of this para-*
7 *graph.*

8 “(C) *DETERMINATION OF EXPENSES.—For*
9 *purposes of subparagraph (A)(vi)(III)—*

10 “(i) *Expenses may be expressed as a*
11 *dollar amount or as a percentage of assets*
12 *(or a combination thereof).*

13 “(ii) *The plan administrator may pro-*
14 *vide disclosure of the expenses for the quar-*
15 *ter or may provide a reasonable and rep-*
16 *resentative estimate of such expenses and*
17 *shall indicate any such estimate as being an*
18 *estimate. Any such estimate shall be based*
19 *on reasonable assumptions stated together*
20 *with such estimate.*

21 “(iii) *To the extent that estimated ex-*
22 *penses are expressed as a percentage of as-*
23 *sets, the disclosure shall also include one of*
24 *the following, stated in dollar amounts:*

1 “(I) an estimate of the expenses
2 for the quarter based on the amount
3 invested in the option; or

4 “(II) an example describing the
5 expenses that would apply during the
6 quarter with respect to a hypothetical
7 \$10,000 investment in the option.

8 “(3) *DISCLOSURE OF SERVICE PROVIDER STATE-*
9 *MENTS.—The plan administrator shall provide to any*
10 *participant or beneficiary a copy of any statement re-*
11 *ceived pursuant to section 4980J within 30 days after*
12 *receipt of a request for such a statement.*

13 “(4) *NOTICE OF MATERIAL CHANGES.—In the*
14 *case of any event or other change which causes the in-*
15 *formation included in any notice described in para-*
16 *graph (1) to become materially incorrect, the plan ad-*
17 *ministrator shall provide participants and bene-*
18 *ficiaries a written statement providing the corrected*
19 *information not later than 30 days after the plan ad-*
20 *ministrator knows, or exercising reasonable diligence*
21 *would have known, of such event or other change.*

22 “(5) *TIME AND MANNER OF PROVIDING NOTICES*
23 *AND DISCLOSURES.—*

24 “(A) *IN GENERAL.—The notices described in*
25 *paragraph (1) shall be provided at such times*

1 *and in such manner as the Secretary of Labor*
2 *may provide. Other notices and materials re-*
3 *quired to be provided under this subsection shall*
4 *be provided in such manner as such Secretary*
5 *may provide.*

6 “(B) *MANNER OF PRESENTATION.*—

7 “(i) *IN GENERAL.*—*All information in-*
8 *cluded in such notices or explanations shall*
9 *be presented in a manner which is easily*
10 *understood by the typical participant.*

11 “(ii) *GENERIC EXAMPLE OF OPER-*
12 *ATING EXPENSES OF INVESTMENT OP-*
13 *TIONS.*—*The information described in para-*
14 *graphs (1)(C)(ii)(I) shall include a generic*
15 *example describing the charges that would*
16 *apply during an annual period with respect*
17 *to a \$10,000 investment in the investment*
18 *option.*

19 “(C) *ANNUAL COMPLIANCE FOR SMALL*
20 *PLANS.*—*A plan that has fewer than 100 partici-*
21 *pants and beneficiaries as of the first day of the*
22 *plan year may provide the explanation described*
23 *in paragraph (2) on an annual rather than a*
24 *quarterly basis.*

25 “(f) *DEFINITIONS.*—

1 “(1) *APPLICABLE DEFINED CONTRIBUTION*
2 *PLAN.—The term ‘applicable defined contribution*
3 *plan’ means the portion of any defined contribution*
4 *plan which—*

5 “(A) *permits a participant or beneficiary to*
6 *exercise control over assets in his or her account,*
7 *and*

8 “(B) *is described in clauses (iii) through*
9 *(vi) of section 402(c)(8)(B).*

10 “(2) *PLAN ADMINISTRATOR.—The term ‘plan ad-*
11 *ministrator’ has the meaning given such term by sec-*
12 *tion 414(g).*

13 “(g) *REGULATIONS.—The Secretary of Labor shall*
14 *prescribe such regulations or other guidance as may be nec-*
15 *essary or appropriate to carry out the purposes of this sec-*
16 *tion, including regulations or other guidance which—*

17 “(1) *provide a later deadline for providing the*
18 *notice of investment menu changes described in sub-*
19 *section (e)(4) in appropriate circumstances, and*

20 “(2) *provide guidelines, and a safe harbor, for*
21 *the selection of an appropriate benchmark, index, or*
22 *other point of comparison for an investment option*
23 *under subsection (e)(1)(C)(iii)(II).”.*

1 (b) *CLERICAL AMENDMENT.*—*The table of sections for*
2 *chapter 43 of such Code is amended by adding at the end*
3 *the following new items:*

 “*Sec. 4980J. Failure to provide notice of plan fee information to plan adminis-*
 trators.”

 “*Sec. 4980K. Failure to provide notice to participants of plan fee information.*”.

4 **SEC. 324. REGULATORY AUTHORITY AND COORDINATION.**

5 (a) *REGULATORY AUTHORITY.*—*The Secretary of*
6 *Labor shall prescribe regulations or other guidance to the*
7 *extent the Secretary determines necessary or appropriate to*
8 *carry out the purposes of sections 105, 111, and 112 of the*
9 *Employee Retirement Income Security Act of 1974 and sec-*
10 *tions 4980J and 4980K of the Internal Revenue Code of*
11 *1986, including regulations or other guidance which—*

12 (1) *provide safe harbor and simplified methods*
13 *for making the allocations described in subsection*
14 *(a)(1)(D) of such section 111 and subsection (d)(1)(D)*
15 *of such section 4980J; and*

16 (2) *provide special rules for the application of*
17 *such sections to—*

18 (A) *investments with a guaranteed rate of*
19 *return;*

20 (B) *investments with an insurance compo-*
21 *nent; and*

22 (C) *employer sponsored retirement plans*
23 *funded through an individual retirement ac-*
24 *count.*

1 (3) address notices with respect to investments
2 provided through participant directed brokerage trad-
3 ing;

4 (4) address the disclosure of information that is
5 not proprietary to the service provider; and

6 (5) provide rules to allow service providers to
7 consolidate information to satisfy the requirements of
8 such sections with respect to all such service pro-
9 viders.

10 (b) *CERTAIN ELECTRONIC DISCLOSURES PER-*
11 *MITTED.*—Any disclosure required under section 112 of the
12 *Employee Retirement Income Security Act of 1974* or sec-
13 *tion 4980K of the Internal Revenue Code of 1986* may be
14 *provided through an electronic medium under such rules*
15 *as shall be prescribed under such section by the Secretary*
16 *of Labor not later than 1 year after the date of the enact-*
17 *ment of this Act. Such rules shall be similar to those appli-*
18 *cable under the Internal Revenue Code of 1986 with respect*
19 *to notices to participants in pension plans. Such Secretary*
20 *shall regularly modify such rules as appropriate to take*
21 *into account new developments, including new forms of elec-*
22 *tronic media, and to fairly take into consideration the in-*
23 *terests of plan sponsors, service providers, and participants.*
24 *The rules prescribed by such Secretary pursuant to this sub-*
25 *section shall provide for a method for the typical partici-*

1 *pant or beneficiary to obtain without undue burden any*
2 *such disclosure in writing on paper in lieu of receipt*
3 *through an electronic medium.*

4 **SEC. 325. EFFECTIVE DATE OF SUBTITLE.**

5 (a) *IN GENERAL.*—*The amendments made by this sub-*
6 *title shall apply to plan years beginning after December*
7 *31, 2011.*

8 (b) *APPLICATION OF SERVICE PROVIDER DISCLO-*
9 *SURES TO EXISTING CONTRACTS AND ARRANGEMENTS.*—
10 *For purposes of section 111 of the Employee Retirement In-*
11 *come Security Act of 1974 and section 4980J of the Internal*
12 *Revenue Code of 1986, any contract or arrangement to pro-*
13 *vide services to a plan which is in effect on January 1,*
14 *2012, shall be treated as a new contract or arrangement*
15 *entered into on such date.*

16 (c) *SPECIAL RULE FOR COMPLIANCE WITH SUB-*
17 *TITLE.*—*Until 12 months after final regulations are issued*
18 *by the Secretary of Labor pursuant to the amendments*
19 *made by this subtitle, a service provider or plan adminis-*
20 *trator shall be treated as having complied with such amend-*
21 *ments if such service provider or plan administrator com-*
22 *plies with a reasonable good faith interpretation of such*
23 *amendments.*

TITLE IV—REVENUE OFFSETS**Subtitle A—Foreign Provisions****SEC. 401. RULES TO PREVENT SPLITTING FOREIGN TAX
CREDITS FROM THE INCOME TO WHICH THEY
RELATE.**

(a) IN GENERAL.—Subpart A of part III of subchapter N of chapter 1 is amended by adding at the end the following new section:

**“SEC. 909. SUSPENSION OF TAXES AND CREDITS UNTIL RE-
LATED INCOME TAKEN INTO ACCOUNT.**

“(a) IN GENERAL.—If there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by the taxpayer, such tax shall not be taken into account for purposes of this title before the taxable year in which the related income is taken into account under this chapter by the taxpayer.

“(b) SPECIAL RULES WITH RESPECT TO SECTION 902 CORPORATIONS.—If there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by a section 902 corporation, such tax shall not be taken into account—

“(1) for purposes of section 902 or 960, or

“(2) for purposes of determining earnings and profits under section 964(a),

1 *before the taxable year in which the related income is taken*
2 *into account under this chapter by such section 902 cor-*
3 *poration or a domestic corporation which meets the owner-*
4 *ship requirements of subsection (a) or (b) of section 902*
5 *with respect to such section 902 corporation.*

6 “(c) *SPECIAL RULES.—For purposes of this section—*

7 “(1) *APPLICATION TO PARTNERSHIPS, ETC.—In*
8 *the case of a partnership, subsections (a) and (b) shall*
9 *be applied at the partner level. Except as otherwise*
10 *provided by the Secretary, a rule similar to the rule*
11 *of the preceding sentence shall apply in the case of*
12 *any S corporation or trust.*

13 “(2) *TREATMENT OF FOREIGN TAXES AFTER*
14 *SUSPENSION.—In the case of any foreign income tax*
15 *not taken into account by reason of subsection (a) or*
16 *(b), except as otherwise provided by the Secretary,*
17 *such tax shall be so taken into account in the taxable*
18 *year referred to in such subsection (other than for*
19 *purposes of section 986(a)) as a foreign income tax*
20 *paid or accrued in such taxable year.*

21 “(d) *DEFINITIONS.—For purposes of this section—*

22 “(1) *FOREIGN TAX CREDIT SPLITTING EVENT.—*
23 *There is a foreign tax credit splitting event with re-*
24 *spect to a foreign income tax if the related income is*

1 *(or will be) taken into account under this chapter by*
2 *a covered person.*

3 “(2) *FOREIGN INCOME TAX.*—*The term ‘foreign*
4 *income tax’ means any income, war profits, or excess*
5 *profits tax paid or accrued to any foreign country or*
6 *to any possession of the United States.*

7 “(3) *RELATED INCOME.*—*The term ‘related in-*
8 *come’ means, with respect to any portion of any for-*
9 *foreign income tax, the income (or, as appropriate, earn-*
10 *ings and profits) to which such portion of foreign in-*
11 *come tax relates.*

12 “(4) *COVERED PERSON.*—*The term ‘covered per-*
13 *son’ means, with respect to any person who pays or*
14 *accrues a foreign income tax (hereafter in this para-*
15 *graph referred to as the ‘payor’)—*

16 “(A) *any entity in which the payor holds,*
17 *directly or indirectly, at least a 10 percent own-*
18 *ership interest (determined by vote or value),*

19 “(B) *any person which holds, directly or in-*
20 *directly, at least a 10 percent ownership interest*
21 *(determined by vote or value) in the payor,*

22 “(C) *any person which bears a relationship*
23 *to the payor described in section 267(b) or*
24 *707(b), and*

1 (2) *foreign income taxes (as so defined) paid or*
2 *accrued by a section 902 corporation (as so defined)*
3 *on or before such date (and not deemed paid under*
4 *section 902(a) or 960 of such Code on or before such*
5 *date), but only for purposes of applying sections 902*
6 *and 960 with respect to periods after such date.*

7 *Section 909(b)(2) of the Internal Revenue Code of 1986, as*
8 *added by this section, shall not apply to foreign income*
9 *taxes described in paragraph (2).*

10 **SEC. 402. DENIAL OF FOREIGN TAX CREDIT WITH RESPECT**
11 **TO FOREIGN INCOME NOT SUBJECT TO**
12 **UNITED STATES TAXATION BY REASON OF**
13 **COVERED ASSET ACQUISITIONS.**

14 (a) *IN GENERAL.*—*Section 901 is amended by redesignig-*
15 *nating subsection (m) as subsection (n) and by inserting*
16 *after subsection (l) the following new subsection:*

17 “(m) *DENIAL OF FOREIGN TAX CREDIT WITH RE-*
18 *SPECT TO FOREIGN INCOME NOT SUBJECT TO UNITED*
19 *STATES TAXATION BY REASON OF COVERED ASSET ACQUI-*
20 *SITIONS.*—

21 “(1) *IN GENERAL.*—*In the case of a covered asset*
22 *acquisition, the disqualified portion of any foreign in-*
23 *come tax determined with respect to the income or*
24 *gain attributable to the relevant foreign assets—*

1 “(A) shall not be taken into account in de-
2 termining the credit allowed under subsection
3 (a), and

4 “(B) in the case of a foreign income tax
5 paid by a section 902 corporation (as defined in
6 section 909(d)(5)), shall not be taken into ac-
7 count for purposes of section 902 or 960.

8 “(2) COVERED ASSET ACQUISITION.—For pur-
9 poses of this section, the term ‘covered asset acqui-
10 sition’ means—

11 “(A) a qualified stock purchase (as defined
12 in section 338(d)(3)) to which section 338(a) ap-
13 plies,

14 “(B) any transaction which—

15 “(i) is treated as an acquisition of as-
16 sets for purposes of this chapter, and

17 “(ii) is treated as the acquisition of
18 stock of a corporation (or is disregarded) for
19 purposes of the foreign income taxes of the
20 relevant jurisdiction,

21 “(C) any acquisition of an interest in a
22 partnership which has an election in effect under
23 section 754, and

24 “(D) to the extent provided by the Sec-
25 retary, any other similar transaction.

1 “(3) *DISQUALIFIED PORTION.*—*For purposes of*
2 *this section—*

3 “(A) *IN GENERAL.*—*The term ‘disqualified*
4 *portion’ means, with respect to any covered asset*
5 *acquisition, for any taxable year, the ratio (ex-*
6 *pressed as a percentage) of—*

7 “(i) *the aggregate basis differences (but*
8 *not below zero) allocable to such taxable*
9 *year under subparagraph (B) with respect*
10 *to all relevant foreign assets, divided by*

11 “(ii) *the income on which the foreign*
12 *income tax referred to in paragraph (1) is*
13 *determined (or, if the taxpayer fails to sub-*
14 *stantiate such income to the satisfaction of*
15 *the Secretary, such income shall be deter-*
16 *mined by dividing the amount of such for-*
17 *ign income tax by the highest marginal tax*
18 *rate applicable to such income in the rel-*
19 *evant jurisdiction).*

20 “(B) *ALLOCATION OF BASIS DIFFERENCE.*—
21 *For purposes of subparagraph (A)(i)—*

22 “(i) *IN GENERAL.*—*The basis difference*
23 *with respect to any relevant foreign asset*
24 *shall be allocated to taxable years using the*

1 applicable cost recovery method under this
2 chapter.

3 “(ii) *SPECIAL RULE FOR DISPOSITION*
4 *OF ASSETS.*—*Except as otherwise provided*
5 *by the Secretary, in the case of the disposi-*
6 *tion of any relevant foreign asset—*

7 “(I) *the basis difference allocated*
8 *to the taxable year which includes the*
9 *date of such disposition shall be the ex-*
10 *cess of the basis difference with respect*
11 *to such asset over the aggregate basis*
12 *difference with respect to such asset*
13 *which has been allocated under clause*
14 *(i) to all prior taxable years, and*

15 “(II) *no basis difference with re-*
16 *spect to such asset shall be allocated*
17 *under clause (i) to any taxable year*
18 *thereafter.*

19 “(C) *BASIS DIFFERENCE.*—

20 “(i) *IN GENERAL.*—*The term ‘basis dif-*
21 *ference’ means, with respect to any relevant*
22 *foreign asset, the excess of—*

23 “(I) *the adjusted basis of such*
24 *asset immediately after the covered*
25 *asset acquisition, over*

1 “(II) the adjusted basis of such
2 asset immediately before the covered
3 asset acquisition.

4 “(ii) *BUILT-IN LOSS ASSETS.*—In the
5 case of a relevant foreign asset with respect
6 to which the amount described in clause
7 (i)(II) exceeds the amount described in
8 clause (i)(I), such excess shall be taken into
9 account under this subsection as a basis dif-
10 ference of a negative amount.

11 “(iii) *SPECIAL RULE FOR SECTION 338*
12 *ELECTIONS.*—In the case of a covered asset
13 acquisition described in paragraph (2)(A),
14 the covered asset acquisition shall be treated
15 for purposes of this subparagraph as occur-
16 ring at the close of the acquisition date (as
17 defined in section 338(h)(2)).

18 “(4) *RELEVANT FOREIGN ASSETS.*—For purposes
19 of this section, the term ‘relevant foreign asset’ means,
20 with respect to any covered asset acquisition, any
21 asset (including any goodwill, going concern value, or
22 other intangible) with respect to such acquisition if
23 income, deduction, gain, or loss attributable to such
24 asset is taken into account in determining the foreign
25 income tax referred to in paragraph (1).

1 “(5) *FOREIGN INCOME TAX.*—For purposes of
2 this section, the term ‘foreign income tax’ means any
3 income, war profits, or excess profits tax paid or ac-
4 crued to any foreign country or to any possession of
5 the United States.

6 “(6) *TAXES ALLOWED AS A DEDUCTION, ETC.*—
7 Sections 275 and 78 shall not apply to any tax which
8 is not allowable as a credit under subsection (a) by
9 reason of this subsection.

10 “(7) *REGULATIONS.*—The Secretary may issue
11 such regulations or other guidance as is necessary or
12 appropriate to carry out the purposes of this sub-
13 section, including to exempt from the application of
14 this subsection certain covered asset acquisitions, and
15 relevant foreign assets with respect to which the basis
16 difference is *de minimis*.”.

17 (b) *EFFECTIVE DATE.*—

18 (1) *IN GENERAL.*—Except as provided in para-
19 graph (2), the amendments made by this section shall
20 apply to covered asset acquisitions (as defined in sec-
21 tion 901(m)(2) of the Internal Revenue Code of 1986,
22 as added by this section) after—

23 (A) May 20, 2010, if the transferor and the
24 transferee are related; and

1 (B) the date of the enactment of this Act in
2 any other case.

3 (2) *TRANSITION RULE.*—The amendments made
4 by this section shall not apply to any covered asset
5 acquisition (as so defined) with respect to which the
6 transferor and the transferee are not related if such
7 acquisition is—

8 (A) made pursuant to a written agreement
9 which was binding on May 20, 2010, and at all
10 times thereafter,

11 (B) described in a ruling request submitted
12 to the Internal Revenue Service on or before such
13 date; or

14 (C) described on or before such date in a
15 public announcement or in a filing with the Se-
16 curities and Exchange Commission.

17 (3) *RELATED PERSONS.*—For purposes of this
18 subsection, a person shall be treated as related to an-
19 other person if the relationship between such persons
20 is described in section 267 or 707(b) of the Internal
21 Revenue Code of 1986.

1 **SEC. 403. SEPARATE APPLICATION OF FOREIGN TAX CRED-**
2 **IT LIMITATION, ETC., TO ITEMS RESOURCED**
3 **UNDER TREATIES.**

4 (a) *IN GENERAL.*—Subsection (d) of section 904 is
5 amended by redesignating paragraph (6) as paragraph (7)
6 and by inserting after paragraph (5) the following new
7 paragraph:

8 “(6) *SEPARATE APPLICATION TO ITEMS*
9 *RESOURCED UNDER TREATIES.*—

10 “(A) *IN GENERAL.*—If—

11 “(i) *without regard to any treaty obli-*
12 *gation of the United States, any item of in-*
13 *come would be treated as derived from*
14 *sources within the United States,*

15 “(ii) *under a treaty obligation of the*
16 *United States, such item would be treated*
17 *as arising from sources outside the United*
18 *States, and*

19 “(iii) *the taxpayer chooses the benefits*
20 *of such treaty obligation,*

21 *subsections (a), (b), and (c) of this section and*
22 *sections 902, 907, and 960 shall be applied sepa-*
23 *rately with respect to each such item.*

24 “(B) *COORDINATION WITH OTHER PROVI-*
25 *SIONS.*—*This paragraph shall not apply to any*

1 of any foreign income taxes deemed to have been paid
2 during the taxable year by such domestic corporation
3 under section 902 by reason of subsection (a) with re-
4 spect to such inclusion in gross income shall not ex-
5 ceed the amount of the foreign income taxes which
6 would have been deemed to have been paid during the
7 taxable year by such domestic corporation if cash in
8 an amount equal to the amount of such inclusion in
9 gross income were distributed as a series of distribu-
10 tions (determined without regard to any foreign taxes
11 which would be imposed on an actual distribution)
12 through the chain of ownership which begins with
13 such foreign corporation and ends with such domestic
14 corporation.

15 “(2) *AUTHORITY TO PREVENT ABUSE.*—The Sec-
16 retary shall issue such regulations or other guidance
17 as is necessary or appropriate to carry out the pur-
18 poses of this subsection, including regulations or other
19 guidance which prevent the inappropriate use of the
20 foreign corporation’s foreign income taxes not deemed
21 paid by reason of paragraph (1).”.

22 “(b) *EFFECTIVE DATE.*—The amendment made by this
23 section shall apply to acquisitions of United States property
24 (as defined in section 956(c) of the Internal Revenue Code
25 of 1986) after May 20, 2010.

1 **SEC. 405. SPECIAL RULE WITH RESPECT TO CERTAIN RE-**
2 **DEMPTIONS BY FOREIGN SUBSIDIARIES.**

3 (a) *IN GENERAL.*—Paragraph (5) of section 304(b) is
4 amended by redesignating subparagraph (B) as subpara-
5 graph (C) and by inserting after subparagraph (A) the fol-
6 lowing new subparagraph:

7 “(B) *SPECIAL RULE IN CASE OF FOREIGN*
8 *ACQUIRING CORPORATION.*—*In the case of any*
9 *acquisition to which subsection (a) applies in*
10 *which the acquiring corporation is a foreign cor-*
11 *poration, no earnings and profits shall be taken*
12 *into account under paragraph (2)(A) (and sub-*
13 *paragraph (A) shall not apply) if more than 50*
14 *percent of the dividends arising from such acqui-*
15 *sition (determined without regard to this sub-*
16 *paragraph) would not—*

17 “(i) *be subject to tax under this chap-*
18 *ter for the taxable year in which the divi-*
19 *dends arise, or*

20 “(ii) *be includible in the earnings and*
21 *profits of a controlled foreign corporation*
22 *(as defined in section 957 and without re-*
23 *gard to section 953(c)).”.*

24 (b) *EFFECTIVE DATE.*—*The amendments made by this*
25 *section shall apply to acquisitions after May 20, 2010.*

1 **SEC. 406. MODIFICATION OF AFFILIATION RULES FOR PUR-**
2 **POSES OF RULES ALLOCATING INTEREST EX-**
3 **PENSE.**

4 (a) *IN GENERAL.*—Subparagraph (A) of section
5 864(e)(5) is amended by adding at the end the following:
6 “Notwithstanding the preceding sentence, a foreign corpora-
7 tion shall be treated as a member of the affiliated group
8 if—

9 “(i) more than 50 percent of the gross
10 income of such foreign corporation for the
11 taxable year is effectively connected with the
12 conduct of a trade or business within the
13 United States, and

14 “(ii) at least 80 percent of either the
15 vote or value of all outstanding stock of such
16 foreign corporation is owned directly or in-
17 directly by members of the affiliated group
18 (determined with regard to this sentence).”.

19 (b) *EFFECTIVE DATE.*—The amendment made by this
20 section shall apply to taxable years beginning after the date
21 of the enactment of this Act.

1 **SEC. 407. TERMINATION OF SPECIAL RULES FOR INTEREST**
2 **AND DIVIDENDS RECEIVED FROM PERSONS**
3 **MEETING THE 80-PERCENT FOREIGN BUSI-**
4 **NESS REQUIREMENTS.**

5 (a) *IN GENERAL.*—Paragraph (1) of section 861(a) is
6 amended by striking subparagraph (A) and by redesignig-
7 nating subparagraphs (B) and (C) as subparagraphs (A)
8 and (B), respectively.

9 (b) *GRANDFATHER RULE WITH RESPECT TO WITH-*
10 *HOLDING ON INTEREST AND DIVIDENDS RECEIVED FROM*
11 *PERSONS MEETING THE 80-PERCENT FOREIGN BUSINESS*
12 *REQUIREMENTS.*—

13 (1) *IN GENERAL.*—Subparagraph (B) of section
14 871(i)(2) is amended to read as follows:

15 “(B) The active foreign business percentage
16 of—

17 “(i) any dividend paid by an existing
18 80/20 company, and

19 “(ii) any interest paid by an existing
20 80/20 company.”.

21 (2) *DEFINITIONS AND SPECIAL RULES.*—Section
22 871 is amended by redesignating subsections (l) and
23 (m) as subsections (m) and (n), respectively, and by
24 inserting after subsection (k) the following new sub-
25 section:

1 “(l) *RULES RELATING TO EXISTING 80/20 COMPANIES.*—For purposes of this subsection and subsection
2
3 (i)(2)(B)—

4 “(1) *EXISTING 80/20 COMPANY.*—

5 “(A) *IN GENERAL.*—The term ‘existing 80/
6 20 company’ means any corporation if—

7 “(i) such corporation met the 80-per-
8 cent foreign business requirements of section
9 861(c)(1) (as in effect before the enactment
10 of this subsection) for such corporation’s
11 last taxable year beginning before January
12 1, 2011,

13 “(ii) such corporation meets the 80-
14 percent foreign business requirements of
15 subparagraph (B) with respect to each tax-
16 able year after the taxable year referred to
17 in clause (i), and

18 “(iii) there has not been an addition of
19 a substantial line of business with respect to
20 such corporation after the date of the enact-
21 ment of this subsection.

22 “(B) *FOREIGN BUSINESS REQUIREMENTS.*—

23 “(i) *IN GENERAL.*—A corporation
24 meets the 80-percent foreign business re-
25 quirements of this subparagraph if it is

1 *shown to the satisfaction of the Secretary*
2 *that at least 80 percent of the gross income*
3 *from all sources of such corporation for the*
4 *testing period is active foreign business in-*
5 *come.*

6 “(ii) *ACTIVE FOREIGN BUSINESS IN-*
7 *COME.—For purposes of clause (i), the term*
8 *‘active foreign business income’ means gross*
9 *income which—*

10 “(I) *is derived from sources out-*
11 *side the United States (as determined*
12 *under this subchapter), and*

13 “(II) *is attributable to the active*
14 *conduct of a trade or business in a for-*
15 *foreign country or possession of the*
16 *United States.*

17 “(iii) *TESTING PERIOD.—For purposes*
18 *of this subsection, the term ‘testing period’*
19 *means the 3-year period ending with the*
20 *close of the taxable year of the corporation*
21 *preceding the payment (or such part of such*
22 *period as may be applicable). If the cor-*
23 *poration has no gross income for such 3-*
24 *year period (or part thereof), the testing pe-*

1 *riod shall be the taxable year in which the*
2 *payment is made.*

3 “(2) *ACTIVE FOREIGN BUSINESS PERCENTAGE.*—
4 *The term ‘active foreign business percentage’ means,*
5 *with respect to any existing 80/20 company, the per-*
6 *centage which—*

7 “(A) *the active foreign business income of*
8 *such company for the testing period, is of*

9 “(B) *the gross income of such company for*
10 *the testing period from all sources.*

11 “(3) *AGGREGATION RULES.*—*For purposes of ap-*
12 *plying paragraph (1) (other than subparagraph*
13 *(A)(i) thereof) and paragraph (2)—*

14 “(A) *IN GENERAL.*—*The corporation re-*
15 *ferred to in paragraph (1)(A) and all of such*
16 *corporation’s subsidiaries shall be treated as one*
17 *corporation.*

18 “(B) *SUBSIDIARIES.*—*For purposes of sub-*
19 *paragraph (A), the term ‘subsidiary’ means any*
20 *corporation in which the corporation referred to*
21 *in subparagraph (A) owns (directly or indi-*
22 *rectly) stock meeting the requirements of section*
23 *1504(a)(2) (determined by substituting ‘50 per-*
24 *cent’ for ‘80 percent’ each place it appears and*
25 *without regard to section 1504(b)(3)).*

1 “(4) *REGULATIONS.*—*The Secretary may issue*
2 *such regulations or other guidance as is necessary or*
3 *appropriate to carry out the purposes of this section,*
4 *including regulations or other guidance which provide*
5 *for the proper application of the aggregation rules de-*
6 *scribed in paragraph (3).”.*

7 *(c) CONFORMING AMENDMENTS.*—

8 (1) *Section 861 is amended by striking sub-*
9 *section (c) and by redesignating subsections (d), (e),*
10 *and (f) as subsections (c), (d), and (e), respectively.*

11 (2) *Paragraph (9) of section 904(h) is amended*
12 *to read as follows:*

13 “(9) *TREATMENT OF CERTAIN DOMESTIC COR-*
14 *PORATIONS.*—*In the case of any dividend treated as*
15 *not from sources within the United States under sec-*
16 *tion 861(a)(2)(A), the corporation paying such divi-*
17 *dend shall be treated for purposes of this subsection*
18 *as a United States-owned foreign corporation.”.*

19 (3) *Subsection (c) of section 2104 is amended in*
20 *the last sentence by striking “or to a debt obligation*
21 *of a domestic corporation” and all that follows and*
22 *inserting a period.*

23 *(d) EFFECTIVE DATE.*—

24 (1) *IN GENERAL.*—*Except as provided in para-*
25 *graph (2), the amendments made by this section shall*

1 *apply to taxable years beginning after December 31,*
2 *2010.*

3 (2) *GRANDFATHER RULE FOR OUTSTANDING*
4 *DEBT OBLIGATIONS.—*

5 (A) *IN GENERAL.—The amendments made*
6 *by this section shall not apply to payments of*
7 *interest on obligations issued before the date of*
8 *the enactment of this Act.*

9 (B) *EXCEPTION FOR RELATED PARTY*
10 *DEBT.—Subparagraph (A) shall not apply to*
11 *any interest which is payable to a related person*
12 *(determined under rules similar to the rules of*
13 *section 954(d)(3)).*

14 (C) *SIGNIFICANT MODIFICATIONS TREATED*
15 *AS NEW ISSUES.—For purposes of subparagraph*
16 *(A), a significant modification of the terms of*
17 *any obligation (including any extension of the*
18 *term of such obligation) shall be treated as a new*
19 *issue.*

20 **SEC. 408. SOURCE RULES FOR INCOME ON GUARANTEES.**

21 (a) *AMOUNTS SOURCED WITHIN THE UNITED*
22 *STATES.—Subsection (a) of section 861 is amended by add-*
23 *ing at the end the following new paragraph:*

24 “(9) *GUARANTEES.—Amounts—*

1 “(A) received from noncorporate residents
2 or domestic corporations with respect to guaran-
3 tees, and

4 “(B) paid by any foreign person with re-
5 spect to guarantees if such amount is connected
6 with income which is effectively connected (or
7 treated as effectively connected) with the conduct
8 of a trade or business in the United States.”.

9 (b) *AMOUNTS SOURCED WITHOUT THE UNITED*
10 *STATES.*—Subsection (a) of section 862 is amended by
11 striking “and” at the end of paragraph (7), by striking the
12 period at the end of paragraph (8) and inserting “; and”,
13 and by adding at the end the following new paragraph:

14 “(9) amounts received with respect to guarantees
15 other than those derived from sources within the
16 United States as provided in section 861(a)(9).”.

17 (c) *CONFORMING AMENDMENT.*—Clause (ii) of section
18 864(c)(4)(B) is amended by striking “dividends or interest”
19 and inserting “dividends, interest, or amounts with respect
20 to guarantees”.

21 (d) *EFFECTIVE DATE.*—The amendments made by this
22 section shall apply to guarantees issued after the date of
23 the enactment of this Act.

1 **SEC. 409. LIMITATION ON EXTENSION OF STATUTE OF LIMITATIONS FOR FAILURE TO NOTIFY SECRETARY OF CERTAIN FOREIGN TRANSFERS.**

2
3
4 (a) *IN GENERAL.*—Paragraph (8) of section 6501(c)
5 is amended—

6 (1) by striking “In the case of any information”
7 and inserting the following:

8 “(A) *IN GENERAL.*—In the case of any in-
9 formation”; and

10 (2) by adding at the end the following:

11 “(B) *APPLICATION TO FAILURES DUE TO*
12 *REASONABLE CAUSE.*—If the failure to furnish
13 the information referred to in subparagraph (A)
14 is due to reasonable cause and not willful ne-
15 glect, subparagraph (A) shall apply only to the
16 item or items related to such failure.”.

17 (b) *EFFECTIVE DATE.*—The amendments made by this
18 section shall take effect as if included in section 513 of the
19 *Hiring Incentives to Restore Employment Act.*

20 **Subtitle B—Personal Service In-**
21 **come Earned in Pass-thru Enti-**
22 **ties**

23 **SEC. 411. PARTNERSHIP INTERESTS TRANSFERRED IN CON-**
24 **NECTION WITH PERFORMANCE OF SERVICES.**

25 (a) *MODIFICATION TO ELECTION TO INCLUDE PART-*
26 *nership Interest in Gross Income in Year of Trans-*

1 *FER.*—*Subsection (c) of section 83 is amended by redesignig-*
2 *nating paragraph (4) as paragraph (5) and by inserting*
3 *after paragraph (3) the following new paragraph:*

4 “(4) *PARTNERSHIP INTERESTS.*—*Except as pro-*
5 *vided by the Secretary, in the case of any transfer of*
6 *an interest in a partnership in connection with the*
7 *provision of services to (or for the benefit of) such*
8 *partnership—*

9 “(A) *the fair market value of such interest*
10 *shall be treated for purposes of this section as*
11 *being equal to the amount of the distribution*
12 *which the partner would receive if the partner-*
13 *ship sold (at the time of the transfer) all of its*
14 *assets at fair market value and distributed the*
15 *proceeds of such sale (reduced by the liabilities of*
16 *the partnership) to its partners in liquidation of*
17 *the partnership, and*

18 “(B) *the person receiving such interest shall*
19 *be treated as having made the election under*
20 *subsection (b)(1) unless such person makes an*
21 *election under this paragraph to have such sub-*
22 *section not apply.”.*

23 “(b) *CONFORMING AMENDMENT.*—*Paragraph (2) of sec-*
24 *tion 83(b) is amended by inserting “or subsection*
25 *(c)(4)(B)” after “paragraph (1)”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to interests in partnerships transferred*
3 *after the date of the enactment of this Act.*

4 **SEC. 412. INCOME OF PARTNERS FOR PERFORMING INVEST-**
5 **MENT MANAGEMENT SERVICES TREATED AS**
6 **ORDINARY INCOME RECEIVED FOR PERFORM-**
7 **ANCE OF SERVICES.**

8 (a) *IN GENERAL.*—*Part I of subchapter K of chapter*
9 *1 is amended by adding at the end the following new sec-*
10 *tion:*

11 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
12 **VESTMENT MANAGEMENT SERVICES TO**
13 **PARTNERSHIP.**

14 “(a) *TREATMENT OF DISTRIBUTIVE SHARE OF PART-*
15 *NERSHIP ITEMS.*—*For purposes of this title, in the case of*
16 *an investment services partnership interest—*

17 “(1) *IN GENERAL.*—*Notwithstanding section*
18 *702(b)—*

19 “(A) *any net income with respect to such*
20 *interest for any partnership taxable year shall be*
21 *treated as ordinary income, and*

22 “(B) *any net loss with respect to such inter-*
23 *est for such year, to the extent not disallowed*
24 *under paragraph (2) for such year, shall be*
25 *treated as an ordinary loss.*

1 *All items of income, gain, deduction, and loss which*
2 *are taken into account in computing net income or*
3 *net loss shall be treated as ordinary income or ordi-*
4 *nary loss (as the case may be).*

5 “(2) *TREATMENT OF LOSSES.—*

6 “(A) *LIMITATION.—Any net loss with re-*
7 *spect to such interest shall be allowed for any*
8 *partnership taxable year only to the extent that*
9 *such loss does not exceed the excess (if any) of—*

10 “(i) *the aggregate net income with re-*
11 *spect to such interest for all prior partner-*
12 *ship taxable years, over*

13 “(ii) *the aggregate net loss with respect*
14 *to such interest not disallowed under this*
15 *subparagraph for all prior partnership tax-*
16 *able years.*

17 “(B) *CARRYFORWARD.—Any net loss for*
18 *any partnership taxable year which is not al-*
19 *lowed by reason of subparagraph (A) shall be*
20 *treated as an item of loss with respect to such*
21 *partnership interest for the succeeding partner-*
22 *ship taxable year.*

23 “(C) *BASIS ADJUSTMENT.—No adjustment*
24 *to the basis of a partnership interest shall be*

1 *made on account of any net loss which is not al-*
2 *lowed by reason of subparagraph (A).*

3 “(D) *PRIOR PARTNERSHIP YEARS.*—*Any*
4 *reference in this paragraph to prior partnership*
5 *taxable years shall only include prior partner-*
6 *ship taxable years to which this section applies.*

7 “(3) *NET INCOME AND LOSS.*—*For purposes of*
8 *this section—*

9 “(A) *NET INCOME.*—*The term ‘net income’*
10 *means, with respect to any investment services*
11 *partnership interest for any partnership taxable*
12 *year, the excess (if any) of—*

13 “(i) *all items of income and gain taken*
14 *into account by the holder of such interest*
15 *under section 702 with respect to such in-*
16 *terest for such year, over*

17 “(ii) *all items of deduction and loss so*
18 *taken into account.*

19 “(B) *NET LOSS.*—*The term ‘net loss’ means,*
20 *with respect to such interest for such year, the*
21 *excess (if any) of the amount described in sub-*
22 *paragraph (A)(ii) over the amount described in*
23 *subparagraph (A)(i).*

24 “(4) *SPECIAL RULE FOR DIVIDENDS.*—*Any divi-*
25 *dend taken into account in determining net income or*

1 *net loss for purposes of paragraph (1) shall not be*
2 *treated as qualified dividend income for purposes of*
3 *section 1(h).*

4 *“(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—*

5 *“(1) GAIN.—Any gain on the disposition of an*
6 *investment services partnership interest shall be—*

7 *“(A) treated as ordinary income, and*

8 *“(B) recognized notwithstanding any other*
9 *provision of this subtitle.*

10 *“(2) LOSS.—Any loss on the disposition of an*
11 *investment services partnership interest shall be treat-*
12 *ed as an ordinary loss to the extent of the excess (if*
13 *any) of—*

14 *“(A) the aggregate net income with respect*
15 *to such interest for all partnership taxable years*
16 *to which this section applies, over*

17 *“(B) the aggregate net loss with respect to*
18 *such interest allowed under subsection (a)(2) for*
19 *all partnership taxable years to which this sec-*
20 *tion applies.*

21 *“(3) EXCEPTION FOR THE DISPOSITION OF AN*
22 *INTEREST IN A PUBLICLY TRADED PARTNERSHIP BY*
23 *AN INDIVIDUAL.—Paragraphs (1) and (2) shall not*
24 *apply in the case of the disposition by an individual*
25 *of an investment services partnership interest which*

1 *is an interest in a publicly traded partnership (as de-*
2 *defined in section 7704) if neither such individual nor*
3 *any member of such individual's family (within the*
4 *meaning of section 318(a)(1)) has (at any time) pro-*
5 *vided any of the services described in subsection (c)(1)*
6 *with respect to assets held (directly or indirectly) by*
7 *such publicly traded partnership.*

8 *“(4) ELECTION WITH RESPECT TO CERTAIN EX-*
9 *CHANGES.—Paragraph (1)(B) shall not apply to the*
10 *contribution of an investment services partnership in-*
11 *terest to a partnership in exchange for an interest in*
12 *such partnership if—*

13 *“(A) the taxpayer makes an irrevocable elec-*
14 *tion to treat the partnership interest received in*
15 *the exchange as an investment services partner-*
16 *ship interest, and*

17 *“(B) the taxpayer agrees to comply with*
18 *such reporting and recordkeeping requirements*
19 *as the Secretary may prescribe.*

20 *“(5) DISPOSITION OF PORTION OF INTEREST.—*
21 *In the case of any disposition of an investment serv-*
22 *ices partnership interest, the amount of net loss which*
23 *otherwise would have (but for subsection (a)(2)(C))*
24 *applied to reduce the basis of such interest shall be*

1 *disregarded for purposes of this section for all suc-*
2 *ceeding partnership taxable years.*

3 *“(6) DISTRIBUTIONS OF PARTNERSHIP PROP-*
4 *ERTY.—In the case of any distribution of property by*
5 *a partnership with respect to any investment services*
6 *partnership interest held by a partner—*

7 *“(A) the excess (if any) of—*

8 *“(i) the fair market value of such prop-*
9 *erty at the time of such distribution, over*

10 *“(ii) the adjusted basis of such prop-*
11 *erty in the hands of the partnership,*

12 *shall be taken into account as an increase in*
13 *such partner’s distributive share of the taxable*
14 *income of the partnership (except to the extent*
15 *such excess is otherwise taken into account in de-*
16 *termining the taxable income of the partnership),*

17 *“(B) such property shall be treated for pur-*
18 *poses of subpart B of part II as money distrib-*
19 *uted to such partner in an amount equal to such*
20 *fair market value, and*

21 *“(C) the basis of such property in the hands*
22 *of such partner shall be such fair market value.*

23 *Subsection (b) of section 734 shall be applied without*
24 *regard to the preceding sentence. In the case of a tax-*
25 *payer which satisfies requirements similar to the re-*

1 *quirements of subparagraphs (A) and (B) of para-*
2 *graph (4), this paragraph and paragraph (1)(B) shall*
3 *not apply to the distribution of a partnership interest*
4 *if such distribution is in connection with a contribu-*
5 *tion (or deemed contribution) of any property of the*
6 *partnership to which section 721 applies pursuant to*
7 *a transaction described in paragraph (1)(B) or (2) of*
8 *section 708(b).*

9 *“(7) APPLICATION OF SECTION 751.—In applying*
10 *section 751, an investment services partnership inter-*
11 *est shall be treated as an inventory item.*

12 *“(c) INVESTMENT SERVICES PARTNERSHIP INTER-*
13 *EST.—For purposes of this section—*

14 *“(1) IN GENERAL.—The term ‘investment serv-*
15 *ices partnership interest’ means any interest in a*
16 *partnership which is held (directly or indirectly) by*
17 *any person if it was reasonably expected (at the time*
18 *that such person acquired such interest) that such*
19 *person (or any person related to such person) would*
20 *provide (directly or indirectly) a substantial quantity*
21 *of any of the following services with respect to assets*
22 *held (directly or indirectly) by the partnership:*

23 *“(A) Advising as to the advisability of in-*
24 *vesting in, purchasing, or selling any specified*
25 *asset.*

1 “(B) *Managing, acquiring, or disposing of*
2 *any specified asset.*

3 “(C) *Arranging financing with respect to*
4 *acquiring specified assets.*

5 “(D) *Any activity in support of any service*
6 *described in subparagraphs (A) through (C).*

7 “(2) *SPECIFIED ASSET.—The term ‘specified*
8 *asset’ means securities (as defined in section 475(c)(2)*
9 *without regard to the last sentence thereof), real estate*
10 *held for rental or investment, interests in partner-*
11 *ships, commodities (as defined in section 475(e)(2)),*
12 *or options or derivative contracts with respect to any*
13 *of the foregoing.*

14 “(3) *EXCEPTION FOR FAMILY FARMS.—The term*
15 *‘specified asset’ shall not include any farm used for*
16 *farming purposes if such farm is held by a partner-*
17 *ship all of the interests in which are held (directly or*
18 *indirectly) by members of the same family. Terms*
19 *used in the preceding sentence which are also used in*
20 *section 2032A shall have the same meaning as when*
21 *used in such section.*

22 “(4) *RELATED PERSONS.—A person shall be*
23 *treated as related to another person if the relationship*
24 *between such persons is described in section 267 or*
25 *707(b).*

1 “(d) *EXCEPTION FOR CERTAIN CAPITAL INTERESTS.*—

2 “(1) *IN GENERAL.*—*In the case of any portion of*
3 *an investment services partnership interest which is*
4 *a qualified capital interest, all items of income, gain,*
5 *loss, and deduction which are allocated to such quali-*
6 *fied capital interest shall not be taken into account*
7 *under subsection (a) if—*

8 “(A) *allocations of items are made by the*
9 *partnership to such qualified capital interest in*
10 *the same manner as such allocations are made to*
11 *other qualified capital interests held by partners*
12 *who do not provide any services described in*
13 *subsection (c)(1) and who are not related to the*
14 *partner holding the qualified capital interest,*
15 *and*

16 “(B) *the allocations made to such other in-*
17 *terests are significant compared to the alloca-*
18 *tions made to such qualified capital interest.*

19 “(2) *AUTHORITY TO PROVIDE EXCEPTIONS TO*
20 *ALLOCATION REQUIREMENTS.*—*To the extent provided*
21 *by the Secretary in regulations or other guidance—*

22 “(A) *ALLOCATIONS TO PORTION OF QUALI-*
23 *FIED CAPITAL INTEREST.*—*Paragraph (1) may*
24 *be applied separately with respect to a portion*
25 *of a qualified capital interest.*

1 “(B) *NO OR INSIGNIFICANT ALLOCATIONS*
2 *TO NONSERVICE PROVIDERS.*—*In any case in*
3 *which the requirements of paragraph (1)(B) are*
4 *not satisfied, items of income, gain, loss, and de-*
5 *duction shall not be taken into account under*
6 *subsection (a) to the extent that such items are*
7 *properly allocable under such regulations or*
8 *other guidance to qualified capital interests.*

9 “(C) *ALLOCATIONS TO SERVICE PROVIDERS’*
10 *QUALIFIED CAPITAL INTERESTS WHICH ARE*
11 *LESS THAN OTHER ALLOCATIONS.*—*Allocations*
12 *shall not be treated as failing to meet the re-*
13 *quirement of paragraph (1)(A) merely because*
14 *the allocations to the qualified capital interest*
15 *represent a lower return than the allocations*
16 *made to the other qualified capital interests re-*
17 *ferred to in such paragraph.*

18 “(3) *SPECIAL RULE FOR CHANGES IN SERV-*
19 *ICES.*—*In the case of an interest in a partnership*
20 *which is not an investment services partnership inter-*
21 *est and which, by reason of a change in the services*
22 *with respect to assets held (directly or indirectly) by*
23 *the partnership, would (without regard to the reason-*
24 *able expectation exception of subsection (c)(1)) have*
25 *become such an interest—*

1 “(A) notwithstanding subsection (c)(1), such
2 interest shall be treated as an investment services
3 partnership interest as of the time of such
4 change, and

5 “(B) for purposes of this subsection, the
6 qualified capital interest of the holder of such
7 partnership interest immediately after such
8 change shall not be less than the fair market
9 value of such interest (determined immediately
10 before such change).

11 “(4) SPECIAL RULE FOR TIERED PARTNER-
12 SHIPS.—Except as otherwise provided by the Sec-
13 retary, in the case of tiered partnerships, all items
14 which are allocated in a manner which meets the re-
15 quirements of paragraph (1) to qualified capital in-
16 terests in a lower-tier partnership shall retain such
17 character to the extent allocated on the basis of quali-
18 fied capital interests in any upper-tier partnership.

19 “(5) EXCEPTION FOR NO-SELF-CHARGED CARRY
20 AND MANAGEMENT FEE PROVISIONS.—Except as oth-
21 erwise provided by the Secretary, an interest shall not
22 fail to be treated as satisfying the requirement of
23 paragraph (1)(A) merely because the allocations made
24 by the partnership to such interest do not reflect the
25 cost of services described in subsection (c)(1) which

1 are provided (directly or indirectly) to the partner-
2 ship by the holder of such interest (or a related per-
3 son).

4 “(6) *SPECIAL RULE FOR DISPOSITIONS.*—In the
5 case of any investment services partnership interest
6 any portion of which is a qualified capital interest,
7 subsection (b) shall not apply to so much of any gain
8 or loss as bears the same proportion to the entire
9 amount of such gain or loss as—

10 “(A) the distributive share of gain or loss
11 that would have been allocated to the qualified
12 capital interest (consistent with the requirements
13 of paragraph (1)) if the partnership had sold all
14 of its assets at fair market value immediately be-
15 fore the disposition, bears to

16 “(B) the distributive share of gain or loss
17 that would have been so allocated to the invest-
18 ment services partnership interest of which such
19 qualified capital interest is a part.

20 “(7) *QUALIFIED CAPITAL INTEREST.*—For pur-
21 poses of this subsection—

22 “(A) *IN GENERAL.*—The term ‘qualified
23 capital interest’ means so much of a partner’s
24 interest in the capital of the partnership as is
25 attributable to—

1 “(i) the fair market value of any
2 money or other property contributed to the
3 partnership in exchange for such interest
4 (determined without regard to section
5 752(a)),

6 “(ii) any amounts which have been in-
7 cluded in gross income under section 83
8 with respect to the transfer of such interest,
9 and

10 “(iii) the excess (if any) of—

11 “(I) any items of income and
12 gain taken into account under section
13 702 with respect to such interest, over

14 “(II) any items of deduction and
15 loss so taken into account.

16 “(B) ADJUSTMENT TO QUALIFIED CAPITAL
17 INTEREST.—

18 “(i) DISTRIBUTIONS AND LOSSES.—

19 The qualified capital interest shall be re-
20 duced by distributions from the partnership
21 with respect to such interest and by the ex-
22 cess (if any) of the amount described in sub-
23 paragraph (A)(iii)(II) over the amount de-
24 scribed in subparagraph (A)(iii)(I).

1 “(i) *SPECIAL RULE FOR CONTRIBU-*
2 *TIONS OF PROPERTY.*—*In the case of any*
3 *contribution of property described in sub-*
4 *paragraph (A)(i) with respect to which the*
5 *fair market value of such property is not*
6 *equal to the adjusted basis of such property*
7 *immediately before such contribution, prop-*
8 *er adjustments shall be made to the quali-*
9 *fied capital interest to take into account*
10 *such difference consistent with such regula-*
11 *tions or other guidance as the Secretary*
12 *may provide.*

13 “(8) *TREATMENT OF CERTAIN LOANS.*—

14 “(A) *PROCEEDS OF PARTNERSHIP LOANS*
15 *NOT TREATED AS QUALIFIED CAPITAL INTEREST*
16 *OF SERVICE PROVIDING PARTNERS.*—*For pur-*
17 *poses of this subsection, an investment services*
18 *partnership interest shall not be treated as a*
19 *qualified capital interest to the extent that such*
20 *interest is acquired in connection with the pro-*
21 *ceeds of any loan or other advance made or*
22 *guaranteed, directly or indirectly, by any other*
23 *partner or the partnership (or any person re-*
24 *lated to any such other partner or the partner-*
25 *ship).*

1 “(B) *REDUCTION IN ALLOCATIONS TO*
2 *QUALIFIED CAPITAL INTERESTS FOR LOANS*
3 *FROM NONSERVICE PROVIDING PARTNERS TO*
4 *THE PARTNERSHIP.*—*For purposes of this sub-*
5 *section, any loan or other advance to the part-*
6 *nership made or guaranteed, directly or indi-*
7 *rectly, by a partner not providing services de-*
8 *scribed in subsection (c)(1) to the partnership (or*
9 *any person related to such partner) shall be*
10 *taken into account in determining the qualified*
11 *capital interests of the partners in the partner-*
12 *ship.*

13 “(e) *OTHER INCOME AND GAIN IN CONNECTION WITH*
14 *INVESTMENT MANAGEMENT SERVICES.*—

15 “(1) *IN GENERAL.*—*If—*

16 “(A) *a person performs (directly or indi-*
17 *rectly) investment management services for any*
18 *entity,*

19 “(B) *such person holds (directly or indi-*
20 *rectly) a disqualified interest with respect to*
21 *such entity, and*

22 “(C) *the value of such interest (or payments*
23 *thereunder) is substantially related to the*
24 *amount of income or gain (whether or not real-*

1 *ized) from the assets with respect to which the*
2 *investment management services are performed,*
3 *any income or gain with respect to such interest shall*
4 *be treated as ordinary income. Rules similar to the*
5 *rules of subsections (a)(4) and (d) shall apply for*
6 *purposes of this subsection.*

7 “(2) *DEFINITIONS.—For purposes of this sub-*
8 *section—*

9 “(A) *DISQUALIFIED INTEREST.—*

10 “(i) *IN GENERAL.—The term ‘disquali-*
11 *fied interest’ means, with respect to any en-*
12 *tity—*

13 “(I) *any interest in such entity*
14 *other than indebtedness,*

15 “(II) *convertible or contingent*
16 *debt of such entity,*

17 “(III) *any option or other right to*
18 *acquire property described in subclause*
19 *(I) or (II), and*

20 “(IV) *any derivative instrument*
21 *entered into (directly or indirectly)*
22 *with such entity or any investor in*
23 *such entity.*

24 “(ii) *EXCEPTIONS.—Such term shall*
25 *not include—*

1 “(I) a partnership interest,

2 “(II) except as provided by the
3 Secretary, any interest in a taxable
4 corporation, and

5 “(III) except as provided by the
6 Secretary, stock in an S corporation.

7 “(B) TAXABLE CORPORATION.—The term
8 ‘taxable corporation’ means—

9 “(i) a domestic C corporation, or

10 “(ii) a foreign corporation substan-
11 tially all of the income of which is—

12 “(I) effectively connected with the
13 conduct of a trade or business in the
14 United States, or

15 “(II) subject to a comprehensive
16 foreign income tax (as defined in sec-
17 tion 457A(d)(2)).

18 “(C) INVESTMENT MANAGEMENT SERV-
19 ICES.—The term ‘investment management serv-
20 ices’ means a substantial quantity of any of the
21 services described in subsection (c)(1).

22 “(f) REGULATIONS.—The Secretary shall prescribe
23 such regulations or other guidance as is necessary or appro-
24 priate to carry out the purposes of this section, including
25 regulations or other guidance to—

1 “(1) provide modifications to the application of
2 this section (including treating related persons as not
3 related to one another) to the extent such modification
4 is consistent with the purposes of this section,

5 “(2) prevent the avoidance of the purposes of this
6 section, and

7 “(3) coordinate this section with the other provi-
8 sions of this title.

9 “(g) *SPECIAL RULES FOR INDIVIDUALS.*—In the case
10 of an individual—

11 “(1) *IN GENERAL.*—Subsection (a)(1) shall apply
12 only to the applicable percentage of the net income or
13 net loss referred to in such subsection.

14 “(2) *DISPOSITIONS, ETC.*—The amount which
15 (but for this paragraph) would be treated as ordinary
16 income by reason of subsection (b) or (e) shall be the
17 applicable percentage of such amount.

18 “(3) *PRO RATA ALLOCATION TO ITEMS.*—For
19 purposes of applying subsections (a) and (e) the ag-
20 gregate amount treated as ordinary income for any
21 such taxable year shall be allocated ratably among the
22 items of income, gain, loss, and deduction taken into
23 account in determining such amount.

24 “(4) *SPECIAL RULE FOR RECOGNITION OF*
25 *GAIN.*—Gain which (but for this section) would not be

1 *recognized shall be recognized by reason of subsection*
2 *(b) only to the extent that such gain is treated as or-*
3 *inary income after application of paragraph (2).*

4 *“(5) COORDINATION WITH LIMITATION ON*
5 *LOSSES.—For purposes of applying paragraph (2) of*
6 *subsection (a) with respect to any net loss for any*
7 *taxable year—*

8 *“(A) such paragraph shall only apply with*
9 *respect to the applicable percentage of such net*
10 *loss for such taxable year,*

11 *“(B) in the case of a prior partnership tax-*
12 *able year referred to in clause (i) or (ii) of sub-*
13 *paragraph (A) of such paragraph, only the ap-*
14 *plicable percentage (as in effect for such prior*
15 *taxable year) of net income or net loss for such*
16 *prior partnership taxable year shall be taken*
17 *into account, and*

18 *“(C) any net loss carried forward to the*
19 *succeeding partnership taxable year under sub-*
20 *paragraph (B) of such paragraph shall—*

21 *“(i) be taken into account in such suc-*
22 *ceeding year without reduction under this*
23 *subsection, and*

1 “(ii) in lieu of being taken into ac-
2 count as an item of loss in such succeeding
3 year, shall be taken into account—

4 “(I) as an increase in net loss or
5 as a reduction in net income (includ-
6 ing below zero), as the case may be,
7 and

8 “(II) after any reduction in the
9 amount of such net loss or net income
10 under this subsection.

11 *A rule similar to the rule of the preceding sentence*
12 *shall apply for purposes of subsection (b)(2)(A).*

13 “(6) *COORDINATION WITH TREATMENT OF DIVI-*
14 *DENDS.—Subsection (a)(4) shall only apply to the*
15 *applicable percentage of dividends described therein.*

16 “(7) *APPLICABLE PERCENTAGE.—For purposes*
17 *of this subsection, the term ‘applicable percentage’*
18 *means 75 percent (50 percent in the case of any tax-*
19 *able year beginning before January 1, 2013).*

20 “(h) *CROSS REFERENCE.—For 40 percent penalty on*
21 *certain underpayments due to the avoidance of this section,*
22 *see section 6662.”.*

23 (b) *TREATMENT FOR PURPOSES OF SECTION 7704.—*
24 *Subsection (d) of section 7704 is amended by adding at the*
25 *end the following new paragraph:*

1 “(6) *INCOME FROM INVESTMENT SERVICES PART-*
2 *nership Interests Not Qualified.*—

3 “(A) *IN GENERAL.*—*Items of income and*
4 *gain shall not be treated as qualifying income if*
5 *such items are treated as ordinary income by*
6 *reason of the application of section 710 (relating*
7 *to special rules for partners providing invest-*
8 *ment management services to partnership). The*
9 *preceding sentence shall not apply to any item*
10 *described in paragraph (1)(E) (or so much of*
11 *paragraph (1)(F) as relates to paragraph*
12 *(1)(E)).*

13 “(B) *SPECIAL RULES FOR CERTAIN PART-*
14 *nerships.*—

15 “(i) *CERTAIN PARTNERSHIPS OWNED*
16 *BY REAL ESTATE INVESTMENT TRUSTS.*—
17 *Subparagraph (A) shall not apply in the*
18 *case of a partnership which meets each of*
19 *the following requirements:*

20 “(I) *Such partnership is treated*
21 *as publicly traded under this section*
22 *solely by reason of interests in such*
23 *partnership being convertible into in-*
24 *terests in a real estate investment trust*
25 *which is publicly traded.*

1 “(II) 50 percent or more of the
2 capital and profits interests of such
3 partnership are owned, directly or in-
4 directly, at all times during the taxable
5 year by such real estate investment
6 trust (determined with the application
7 of section 267(c)).

8 “(III) Such partnership meets the
9 requirements of paragraphs (2), (3),
10 and (4) of section 856(c).

11 “(ii) *CERTAIN PARTNERSHIPS OWNING*
12 *OTHER PUBLICLY TRADED PARTNER-*
13 *SHIPS.—Subparagraph (A) shall not apply*
14 *in the case of a partnership which meets*
15 *each of the following requirements:*

16 “(I) Substantially all of the assets
17 of such partnership consist of interests
18 in one or more publicly traded part-
19 nerships (determined without regard to
20 subsection (b)(2)).

21 “(II) Substantially all of the in-
22 come of such partnership is ordinary
23 income or section 1231 gain (as de-
24 fined in section 1231(a)(3)).

1 “(C) *TRANSITIONAL RULE.*—Subparagraph
2 (A) shall not apply to any taxable year of the
3 partnership beginning before the date which is
4 10 years after the date of the enactment of this
5 paragraph.”.

6 (c) *IMPOSITION OF PENALTY ON UNDERPAYMENTS.*—

7 (1) *IN GENERAL.*—Subsection (b) of section 6662
8 is amended by inserting after paragraph (7) the fol-
9 lowing new paragraph:

10 “(8) The application of subsection (e) of section
11 710 or the regulations prescribed under section 710(f)
12 to prevent the avoidance of the purposes of section
13 710.”.

14 (2) *AMOUNT OF PENALTY.*—

15 (A) *IN GENERAL.*—Section 6662 is amended
16 by adding at the end the following new sub-
17 section:

18 “(k) *INCREASE IN PENALTY IN CASE OF PROPERTY*
19 *TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-*
20 *ICES.*—In the case of any portion of an underpayment to
21 which this section applies by reason of subsection (b)(8),
22 subsection (a) shall be applied with respect to such portion
23 by substituting ‘40 percent’ for ‘20 percent’.”.

1 (B) *CONFORMING AMENDMENT.*—Subpara-
2 graph (B) of section 6662A(e)(2) is amended by
3 striking “or (i)” and inserting “, (i), or (k)”.

4 (3) *SPECIAL RULES FOR APPLICATION OF REA-*
5 *SONABLE CAUSE EXCEPTION.*—Subsection (c) of sec-
6 tion 6664 is amended—

7 (A) by redesignating paragraphs (3) and
8 (4) as paragraphs (4) and (5), respectively;

9 (B) by striking “paragraph (3)” in para-
10 graph (5)(A), as so redesignated, and inserting
11 “paragraph (4)”; and

12 (C) by inserting after paragraph (2) the fol-
13 lowing new paragraph:

14 “(3) *SPECIAL RULE FOR UNDERPAYMENTS AT-*
15 *TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-*
16 *ICES.*—

17 “(A) *IN GENERAL.*—Paragraph (1) shall
18 not apply to any portion of an underpayment to
19 which this section applies by reason of subsection
20 (b)(8) unless—

21 “(i) the relevant facts affecting the tax
22 treatment of the item are adequately dis-
23 closed,

24 “(ii) there is or was substantial au-
25 thority for such treatment, and

1 “(iii) the taxpayer reasonably believed
2 that such treatment was more likely than
3 not the proper treatment.

4 “(B) RULES RELATING TO REASONABLE BE-
5 LIEF.—Rules similar to the rules of subsection
6 (d)(3) shall apply for purposes of subparagraph
7 (A)(iii).”.

8 (d) INCOME AND LOSS FROM INVESTMENT SERVICES
9 PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DE-
10 TERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

11 (1) INTERNAL REVENUE CODE.—Section 1402(a)
12 is amended by striking “and” at the end of para-
13 graph (16), by striking the period at the end of para-
14 graph (17) and inserting “; and”, and by inserting
15 after paragraph (17) the following new paragraph:

16 “(18) notwithstanding the preceding provisions
17 of this subsection, in the case of any individual en-
18 gaged in the trade or business of providing services
19 described in section 710(c)(1) with respect to any en-
20 tity, any amount treated as ordinary income or ordi-
21 nary loss of such individual under section 710 with
22 respect to such entity shall be taken into account in
23 determining the net earnings from self-employment of
24 such individual.”.

1 (2) *SOCIAL SECURITY ACT.*—Section 211(a) of
2 *the Social Security Act is amended by striking “and”*
3 *at the end of paragraph (15), by striking the period*
4 *at the end of paragraph (16) and inserting “; and”,*
5 *and by inserting after paragraph (16) the following*
6 *new paragraph:*

7 “(17) *Notwithstanding the preceding provisions*
8 *of this subsection, in the case of any individual en-*
9 *gaged in the trade or business of providing services*
10 *described in section 710(c)(1) of the Internal Revenue*
11 *Code of 1986 with respect to any entity, any amount*
12 *treated as ordinary income or ordinary loss of such*
13 *individual under section 710 of such Code with re-*
14 *spect to such entity shall be taken into account in de-*
15 *termining the net earnings from self-employment of*
16 *such individual.”.*

17 *(e) CONFORMING AMENDMENTS.*—

18 (1) *Subsection (d) of section 731 is amended by*
19 *inserting “section 710(b)(4) (relating to distributions*
20 *of partnership property),” after “to the extent other-*
21 *wise provided by”.*

22 (2) *Section 741 is amended by inserting “or sec-*
23 *tion 710 (relating to special rules for partners pro-*
24 *viding investment management services to partner-*
25 *ship)” before the period at the end.*

1 (3) *The table of sections for part I of subchapter*
2 *K of chapter 1 is amended by adding at the end the*
3 *following new item:*

 “*Sec. 710. Special rules for partners providing investment management services to partnership.*”.

4 (f) *EFFECTIVE DATE.*—

5 (1) *IN GENERAL.*—*Except as otherwise provided*
6 *in this subsection, the amendments made by this sec-*
7 *tion shall apply to taxable years ending after Decem-*
8 *ber 31, 2010.*

9 (2) *PARTNERSHIP TAXABLE YEARS WHICH IN-*
10 *CLUDE EFFECTIVE DATE.*—*In applying section 710(a)*
11 *of the Internal Revenue Code of 1986 (as added by*
12 *this section) in the case of any partnership taxable*
13 *year which includes December 31, 2010, the amount*
14 *of the net income referred to in such section shall be*
15 *treated as being the lesser of the net income for the*
16 *entire partnership taxable year or the net income de-*
17 *termined by only taking into account items attrib-*
18 *utable to the portion of the partnership taxable year*
19 *which is after such date.*

20 (3) *DISPOSITIONS OF PARTNERSHIP INTER-*
21 *ESTS.*—*Section 710(b) of the Internal Revenue Code*
22 *of 1986 (as added by this section) shall apply to dis-*
23 *positions and distributions after December 31, 2010.*

1 (4) *OTHER INCOME AND GAIN IN CONNECTION*
2 *WITH INVESTMENT MANAGEMENT SERVICES.*—Section
3 710(e) of such Code (as added by this section) shall
4 take effect on December 31, 2010.

5 **SEC. 413. EMPLOYMENT TAX TREATMENT OF PROFES-**
6 **SIONAL SERVICE BUSINESSES.**

7 (a) *IN GENERAL.*—Section 1402 is amended by adding
8 at the end the following new subsection:

9 “(m) *SPECIAL RULES FOR PROFESSIONAL SERVICE*
10 *BUSINESSES.*—

11 “(1) *SHAREHOLDERS PROVIDING SERVICES TO*
12 *DISQUALIFIED S CORPORATIONS.*—

13 “(A) *IN GENERAL.*—In the case of any dis-
14 qualified S corporation, each shareholder of such
15 disqualified S corporation who provides substan-
16 tial services with respect to the professional serv-
17 ice business referred to in subparagraph (C)
18 shall take into account such shareholder’s pro
19 rata share of all items of income or loss described
20 in section 1366 which are attributable to such
21 business in determining the shareholder’s net
22 earnings from self-employment.

23 “(B) *TREATMENT OF FAMILY MEMBERS.*—
24 Except as otherwise provided by the Secretary,
25 the shareholder’s pro rata share of items referred

1 to in subparagraph (A) shall be increased by the
2 pro rata share of such items of each member of
3 such shareholder's family (within the meaning of
4 section 318(a)(1)) who does not provide substan-
5 tial services with respect to such professional
6 service business.

7 “(C) *DISQUALIFIED S CORPORATION.*—For
8 purposes of this subsection, the term ‘disqualified
9 S corporation’ means—

10 “(i) any S corporation which is a
11 partner in a partnership which is engaged
12 in a professional service business if substan-
13 tially all of the activities of such S corpora-
14 tion are performed in connection with such
15 partnership, and

16 “(ii) any other S corporation which is
17 engaged in a professional service business if
18 the principal asset of such business is the
19 reputation and skill of 3 or fewer employees.

20 “(2) *PARTNERS.*—In the case of any partnership
21 which is engaged in a professional service business,
22 subsection (a)(13) shall not apply to any partner who
23 provides substantial services with respect to such pro-
24 fessional service business.

1 “(3) *PROFESSIONAL SERVICE BUSINESS.*—For
2 purposes of this subsection, the term ‘professional
3 service business’ means any trade or business if sub-
4 stantially all of the activities of such trade or business
5 involve providing services in the fields of health, law,
6 lobbying, engineering, architecture, accounting, actu-
7 arial science, performing arts, consulting, athletics,
8 investment advice or management, or brokerage serv-
9 ices.

10 “(4) *REGULATIONS.*—The Secretary shall pre-
11 scribe such regulations as may be necessary or appro-
12 priate to carry out the purposes of this subsection, in-
13 cluding regulations which prevent the avoidance of
14 the purposes of this subsection through tiered entities
15 or otherwise.

16 “(5) *CROSS REFERENCE.*—For employment tax
17 treatment of wages paid to shareholders of S corpora-
18 tions, see subtitle C.”.

19 (b) *CONFORMING AMENDMENT.*—Section 211 of the So-
20 cial Security Act is amended by adding at the end the fol-
21 lowing new subsection:

22 “(l) *SPECIAL RULES FOR PROFESSIONAL SERVICE*
23 *BUSINESSES.*—

24 “(1) *SHAREHOLDERS PROVIDING SERVICES TO*
25 *DISQUALIFIED S CORPORATIONS.*—

1 “(A) *IN GENERAL.*—*In the case of any dis-*
2 *qualified S corporation, each shareholder of such*
3 *disqualified S corporation who provides substan-*
4 *tial services with respect to the professional serv-*
5 *ice business referred to in subparagraph (C)*
6 *shall take into account such shareholder’s pro*
7 *rata share of all items of income or loss described*
8 *in section 1366 of the Internal Revenue Code of*
9 *1986 which are attributable to such business in*
10 *determining the shareholder’s net earnings from*
11 *self-employment.*

12 “(B) *TREATMENT OF FAMILY MEMBERS.*—
13 *Except as otherwise provided by the Secretary of*
14 *the Treasury, the shareholder’s pro rata share of*
15 *items referred to in subparagraph (A) shall be*
16 *increased by the pro rata share of such items of*
17 *each member of such shareholder’s family (within*
18 *the meaning of section 318(a)(1) of the Internal*
19 *Revenue Code of 1986) who does not provide sub-*
20 *stantial services with respect to such professional*
21 *service business.*

22 “(C) *DISQUALIFIED S CORPORATION.*—*For*
23 *purposes of this subsection, the term ‘disqualified*
24 *S corporation’ means—*

1 “(i) any S corporation which is a
2 partner in a partnership which is engaged
3 in a professional service business if substan-
4 tially all of the activities of such S corpora-
5 tion are performed in connection with such
6 partnership, and

7 “(ii) any other S corporation which is
8 engaged in a professional service business if
9 the principal asset of such business is the
10 reputation and skill of 3 or fewer employees.

11 “(2) PARTNERS.—In the case of any partnership
12 which is engaged in a professional service business,
13 subsection (a)(12) shall not apply to any partner who
14 provides substantial services with respect to such pro-
15 fessional service business.

16 “(3) PROFESSIONAL SERVICE BUSINESS.—For
17 purposes of this subsection, the term ‘professional
18 service business’ means any trade or business if sub-
19 stantially all of the activities of such trade or business
20 involve providing services in the fields of health, law,
21 lobbying, engineering, architecture, accounting, actu-
22 arial science, performing arts, consulting, athletics,
23 investment advice or management, or brokerage serv-
24 ices.”.

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to taxable years beginning after Decem-*
3 *ber 31, 2010.*

4 ***Subtitle C—Corporate Provisions***

5 ***SEC. 421. TREATMENT OF SECURITIES OF A CONTROLLED*** 6 ***CORPORATION EXCHANGED FOR ASSETS IN*** 7 ***CERTAIN REORGANIZATIONS.***

8 (a) *IN GENERAL.*—*Section 361 (relating to non-*
9 *recognition of gain or loss to corporations; treatment of dis-*
10 *tributions) is amended by adding at the end the following*
11 *new subsection:*

12 “(d) *SPECIAL RULES FOR TRANSACTIONS INVOLVING*
13 *SECTION 355 DISTRIBUTIONS.*—*In the case of a reorganiza-*
14 *tion described in section 368(a)(1)(D) with respect to which*
15 *stock or securities of the corporation to which the assets are*
16 *transferred are distributed in a transaction which qualifies*
17 *under section 355—*

18 “(1) *this section shall be applied by substituting*
19 ‘*stock other than nonqualified preferred stock (as de-*
20 ‘*defined in section 351(g)(2))*’ for ‘*stock or securities*’ in
21 *subsections (a) and (b)(1), and*

22 “(2) *the first sentence of subsection (b)(3) shall*
23 *apply only to the extent that the sum of the money*
24 *and the fair market value of the other property trans-*
25 *ferred to such creditors does not exceed the adjusted*

1 *bases of such assets transferred (reduced by the*
2 *amount of the liabilities assumed (within the mean-*
3 *ing of section 357(c)).”.*

4 **(b) CONFORMING AMENDMENT.**—*Paragraph (3) of sec-*
5 *tion 361(b) is amended by striking the last sentence.*

6 **(c) EFFECTIVE DATE.**—

7 **(1) IN GENERAL.**—*Except as provided in para-*
8 *graph (2), the amendments made by this section shall*
9 *apply to exchanges after the date of the enactment of*
10 *this Act.*

11 **(2) TRANSITION RULE.**—*The amendments made*
12 *by this section shall not apply to any exchange pursu-*
13 *ant to a transaction which is—*

14 **(A)** *made pursuant to a written agreement*
15 *which was binding on March 15, 2010, and at*
16 *all times thereafter;*

17 **(B)** *described in a ruling request submitted*
18 *to the Internal Revenue Service on or before such*
19 *date; or*

20 **(C)** *described on or before such date in a*
21 *public announcement or in a filing with the Se-*
22

1 **SEC. 422. TAXATION OF BOOT RECEIVED IN REORGANIZA-**
2 **TIONS.**

3 (a) *IN GENERAL.*—Paragraph (2) of section 356(a) is
4 amended—

5 (1) by striking “If an exchange” and inserting
6 “Except as otherwise provided by the Secretary—

7 “(A) *IN GENERAL.*—If an exchange”;

8 (2) by striking “then there shall be” and all that
9 follows through “February 28, 1913” and inserting
10 “then the amount of other property or money shall be
11 treated as a dividend to the extent of the earnings and
12 profits of the corporation”; and

13 (3) by adding at the end the following new sub-
14 paragraph:

15 “(B) *CERTAIN REORGANIZATIONS.*—In the
16 case of a reorganization described in section
17 368(a)(1)(D) to which section 354(b)(1) applies
18 or any other reorganization specified by the Sec-
19 retary, in applying subparagraph (A)—

20 “(i) the earnings and profits of each
21 corporation which is a party to the reorga-
22 nization shall be taken into account, and

23 “(ii) the amount which is a dividend
24 (and source thereof) shall be determined
25 under rules similar to the rules of para-
26 graphs (2) and (5) of section 304(b).”.

1 (b) *EARNINGS AND PROFITS.*—Paragraph (7) of sec-
2 tion 312(n) is amended by adding at the end the following:
3 “A similar rule shall apply to an exchange to which section
4 356(a)(1) applies.”.

5 (c) *CONFORMING AMENDMENT.*—Paragraph (1) of sec-
6 tion 356(a) is amended by striking “then the gain” and
7 inserting “then (except as provided in paragraph (2)) the
8 gain”.

9 (d) *EFFECTIVE DATE.*—

10 (1) *IN GENERAL.*—Except as provided in para-
11 graph (2), the amendments made by this section shall
12 apply to exchanges after the date of the enactment of
13 this Act.

14 (2) *TRANSITION RULE.*—The amendments made
15 by this section shall not apply to any exchange be-
16 tween unrelated persons pursuant to a transaction
17 which is—

18 (A) made pursuant to a written agreement
19 which was binding on May 20, 2010, and at all
20 times thereafter;

21 (B) described in a ruling request submitted
22 to the Internal Revenue Service on or before such
23 date; or

1 (C) described in a public announcement or
2 filing with the Securities and Exchange Commis-
3 sion on or before such date.

4 (3) *RELATED PERSONS*.—For purposes of this
5 subsection, a person shall be treated as related to an-
6 other person if the relationship between such persons
7 is described in section 267 or 707(b) of the Internal
8 Revenue Code of 1986.

9 **Subtitle D—Other Provisions**

10 **SEC. 431. MODIFICATIONS WITH RESPECT TO OIL SPILL LI-** 11 **ABILITY TRUST FUND.**

12 (a) *EXTENSION OF APPLICATION OF OIL SPILL LI-*
13 *ABILITY TRUST FUND FINANCING RATE*.—Paragraph (2) of
14 section 4611(f) is amended by striking “December 31, 2017”
15 and inserting “December 31, 2020”.

16 (b) *INCREASE IN OIL SPILL LIABILITY TRUST FUND*
17 *FINANCING RATE*.—Subparagraph (B) of section 4611(c)(2)
18 is amended to read as follows:

19 “(B) the Oil Spill Liability Trust Fund fi-
20 nancing rate is 34 cents a barrel.”.

21 (c) *INCREASE IN PER INCIDENT LIMITATIONS ON EX-*
22 *PENDITURES*.—Subparagraph (A) of section 9509(c)(2) is
23 amended—

24 (1) by striking “\$1,000,000,000” in clause (i)
25 and inserting “\$5,000,000,000”;

1 (2) by striking “\$500,000,000” in clause (ii) and
2 inserting “\$2,500,000,000”; and

3 (3) by striking “\$1,000,000,000 PER INCIDENT,
4 ETC” in the heading and inserting “PER INCIDENT
5 LIMITATIONS”.

6 (d) *EFFECTIVE DATE.*—

7 (1) *EXTENSION OF FINANCING RATE.*—*Except as*
8 *provided in paragraph (2), the amendments made by*
9 *this section shall take effect on the date of the enact-*
10 *ment of this Act.*

11 (2) *INCREASE IN FINANCING RATE.*—*The amend-*
12 *ment made by subsection (b) shall apply to crude oil*
13 *received and petroleum products entered during cal-*
14 *endar quarters beginning more than 60 days after the*
15 *date of the enactment of this Act.*

16 **SEC. 432. TIME FOR PAYMENT OF CORPORATE ESTIMATED**
17 **TAXES.**

18 *The percentage under paragraph (2) of section 561 of*
19 *the Hiring Incentives to Restore Employment Act in effect*
20 *on the date of the enactment of this Act is increased by*
21 *36 percentage points.*

1 **TITLE V—UNEMPLOYMENT,**
2 **HEALTH, AND OTHER ASSIST-**
3 **ANCE**

4 **Subtitle A—Unemployment**
5 **Insurance and Other Assistance**

6 **SEC. 501. EXTENSION OF UNEMPLOYMENT INSURANCE**
7 **PROVISIONS.**

8 (a) *IN GENERAL.*—(1) *Section 4007 of the Supple-*
9 *mental Appropriations Act, 2008 (Public Law 110–252; 26*
10 *U.S.C. 3304 note) is amended—*

11 (A) *by striking “June 2, 2010” each place it ap-*
12 *pears and inserting “November 30, 2010”;*

13 (B) *in the heading for subsection (b)(2), by strik-*
14 *ing “JUNE 2, 2010” and inserting “NOVEMBER 30,*
15 *2010”; and*

16 (C) *in subsection (b)(3), by striking “November*
17 *6, 2010” and inserting “April 30, 2011”.*

18 (2) *Section 2002(e) of the Assistance for Unemployed*
19 *Workers and Struggling Families Act, as contained in Pub-*
20 *lic Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 438), is*
21 *amended—*

22 (A) *in paragraph (1)(B), by striking “June 2,*
23 *2010” and inserting “November 30, 2010”;*

1 (B) in the heading for paragraph (2), by strik-
2 ing “JUNE 2, 2010” and inserting “NOVEMBER 30,
3 2010”; and

4 (C) in paragraph (3), by striking “December 7,
5 2010” and inserting “May 31, 2011”.

6 (3) Section 2005 of the Assistance for Unemployed
7 Workers and Struggling Families Act, as contained in Pub-
8 lic Law 111–5 (26 U.S.C. 3304 note; 123 Stat. 444), is
9 amended—

10 (A) by striking “June 2, 2010” each place it ap-
11 pears and inserting “December 1, 2010”; and

12 (B) in subsection (c), by striking “November 6,
13 2010” and inserting “May 1, 2011”.

14 (4) Section 5 of the Unemployment Compensation Ex-
15 tension Act of 2008 (Public Law 110–449; 26 U.S.C. 3304
16 note) is amended by striking “November 6, 2010” and in-
17 serting “April 30, 2011”.

18 (b) FUNDING.—Section 4004(e)(1) of the Supplemental
19 Appropriations Act, 2008 (Public Law 110–252; 26 U.S.C.
20 3304 note) is amended—

21 (1) in subparagraph (D), by striking “and” at
22 the end; and

23 (2) by inserting after subparagraph (E) the fol-
24 lowing:

1 “(1) If—

2 “(A) an individual has been determined to
3 be entitled to emergency unemployment com-
4 pensation with respect to a benefit year,

5 “(B) that benefit year has expired,

6 “(C) that individual has remaining entitle-
7 ment to emergency unemployment compensation
8 with respect to that benefit year, and

9 “(D) that individual would qualify for a
10 new benefit year in which the weekly benefit
11 amount of regular compensation is at least either
12 \$100 or 25 percent less than the individual’s
13 weekly benefit amount in the benefit year re-
14 ferred to in subparagraph (A),

15 then the State shall determine eligibility for com-
16 pensation as provided in paragraph (2).

17 “(2) For individuals described in paragraph (1),
18 the State shall determine whether the individual is to
19 be paid emergency unemployment compensation or
20 regular compensation for a week of unemployment
21 using one of the following methods:

22 “(A) The State shall, if permitted by State
23 law, establish a new benefit year, but defer the
24 payment of regular compensation with respect to
25 that new benefit year until exhaustion of all

1 *emergency unemployment compensation payable*
2 *with respect to the benefit year referred to in*
3 *paragraph (1)(A);*

4 “(B) *The State shall, if permitted by State*
5 *law, defer the establishment of a new benefit year*
6 *(which uses all the wages and employment which*
7 *would have been used to establish a benefit year*
8 *but for the application of this paragraph), until*
9 *exhaustion of all emergency unemployment com-*
10 *ensation payable with respect to the benefit*
11 *year referred to in paragraph(1)(A);*

12 “(C) *The State shall pay, if permitted by*
13 *State law—*

14 “(i) *regular compensation equal to the*
15 *weekly benefit amount established under the*
16 *new benefit year, and*

17 “(ii) *emergency unemployment com-*
18 *ensation equal to the difference between*
19 *that weekly benefit amount and the weekly*
20 *benefit amount for the expired benefit year;*
21 *or*

22 “(D) *The State shall determine rights to*
23 *emergency unemployment compensation without*
24 *regard to any rights to regular compensation if*

1 (3), except that the amounts shall remain
2 available through fiscal year 2011 to make
3 grants and payments to States in accord-
4 ance with paragraph (3)(C) to cover ex-
5 penditures to subsidize employment posi-
6 tions held by individuals placed in the posi-
7 tions before fiscal year 2011.

8 “(ii) *FISCAL YEAR 2011.*—Subject to
9 clause (iii), the amounts appropriated to
10 the *Emergency Fund* under subparagraph
11 (A) for fiscal year 2011 shall remain avail-
12 able through fiscal year 2012 and shall be
13 used to make grants to States based on ex-
14 penditures in fiscal year 2011 for benefits
15 and services provided in fiscal year 2011 in
16 accordance with the requirements of para-
17 graph (3).

18 “(iii) *RESERVATION OF FUNDS.*—Of
19 the amounts appropriated to the *Emergency*
20 *Fund* under subparagraph (A) for fiscal
21 year 2011, \$500,000 shall be placed in re-
22 serve for use in fiscal year 2012, and shall
23 be used to award grants for any expendi-
24 tures described in this subsection incurred
25 by States after September 30, 2011.”;

1 (3) in paragraph (2)(C), by striking “2010” and
2 inserting “2012”;

3 (4) in paragraph (3)—

4 (A) in clause (i) of each of subparagraphs
5 (A), (B), and (C)—

6 (i) by striking “year 2009 or 2010”
7 and inserting “years 2009 through 2011”;

8 (ii) by striking “and” at the end of
9 subclause (I);

10 (iii) by striking the period at the end
11 of subclause (II) and inserting “; and”; and

12 (iv) by adding at the end the following:

13 “(III) if the quarter is in fiscal
14 year 2011, has provided the Secretary
15 with such information as the Secretary
16 may find necessary in order to make
17 the determinations, or take any other
18 action, described in paragraph
19 (5)(C).”; and

20 (B) in subparagraph (C), by adding at the
21 end the following:

22 “(iv) *LIMITATION ON EXPENDITURES*
23 *FOR SUBSIDIZED EMPLOYMENT.*—An ex-
24 penditure for subsidized employment shall
25 be taken into account under clause (ii) only

1 *if the expenditure is used to subsidize em-*
2 *ployment for—*

3 “(I) *a member of a needy family*
4 *(without regard to whether the family*
5 *is receiving assistance under the State*
6 *program funded under this part); or*

7 “(II) *an individual who has ex-*
8 *hausted (or, within 60 days, will ex-*
9 *haust) all rights to receive unemploy-*
10 *ment compensation under Federal and*
11 *State law, and who is a member of a*
12 *needy family.”;*

13 (5) *by striking paragraph (5) and inserting the*
14 *following:*

15 “(5) *LIMITATIONS ON PAYMENTS; ADJUSTMENT*
16 *AUTHORITY.—*

17 “(A) *FISCAL YEARS 2009 AND 2010.—The*
18 *total amount payable to a single State under*
19 *subsection (b) and this subsection for fiscal years*
20 *2009 and 2010 combined shall not exceed 50 per-*
21 *cent of the annual State family assistance grant.*

22 “(B) *FISCAL YEAR 2011.—Subject to sub-*
23 *paragraph (C), the total amount payable to a*
24 *single State under subsection (b) and this sub-*
25 *section for fiscal year 2011 shall not exceed 30*

1 *percent of the annual State family assistance*
2 *grant.*

3 “(C) *ADJUSTMENT AUTHORITY.*—*If the Sec-*
4 *retary determines that the Emergency Fund is at*
5 *risk of being depleted before September 30, 2011,*
6 *or that funds are available to accommodate addi-*
7 *tional State requests under this subsection, the*
8 *Secretary may, through program instructions*
9 *issued without regard to the requirements of sec-*
10 *tion 553 of title 5, United States Code—*

11 “(i) *specify priority criteria for*
12 *awarding grants to States during fiscal*
13 *year 2011; and*

14 “(ii) *adjust the percentage limitation*
15 *applicable under subparagraph (B) with re-*
16 *spect to the total amount payable to a sin-*
17 *gle State for fiscal year 2011.”; and*

18 (6) *in paragraph (6), by inserting “or for ex-*
19 *penditures described in paragraph (3)(C)(iv)” before*
20 *the period.*

21 (b) *CONFORMING AMENDMENTS.*—*Section 2101 of di-*
22 *vision B of the American Recovery and Reinvestment Act*
23 *of 2009 (Public Law 111–5) is amended—*

24 (1) *in subsection (a)(2)—*

1 (A) by striking “2010” and inserting
2 “2011”; and

3 (B) by striking all that follows “repealed”
4 and inserting a period; and

5 (2) in subsection (d)(1), by striking “2010” and
6 inserting “2011”.

7 (c) *PROGRAM GUIDANCE.*—*The Secretary of Health*
8 *and Human Services shall issue program guidance, without*
9 *regard to the requirements of section 553 of title 5, United*
10 *States Code, which ensures that the funds provided under*
11 *the amendments made by this section to a jurisdiction for*
12 *subsidized employment do not support any subsidized em-*
13 *ployment position the annual salary of which is greater*
14 *than, at State option—*

15 (1) *200 percent of the poverty line (within the*
16 *meaning of section 673(2) of the Omnibus Budget*
17 *Reconciliation Act of 1981, including any revision re-*
18 *quired by such section 673(2)) for a family of 4; or*

19 (2) *the median wage in the jurisdiction.*

20 ***Subtitle B—Health Provisions***

21 ***SEC. 511. EXTENSION OF SECTION 508 RECLASSIFICATIONS.***

22 (a) *IN GENERAL.*—*Section 106(a) of division B of the*
23 *Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395*
24 *note), as amended by section 117 of the Medicare, Medicaid,*
25 *and SCHIP Extension Act of 2007 (Public Law 110–173),*

1 *section 124 of the Medicare Improvements for Patients and*
2 *Providers Act of 2008 (Public Law 110–275), and sections*
3 *3137(a) and 10317 of Public Law 111–148, is amended by*
4 *striking “September 30, 2010” and inserting “September*
5 *30, 2011”.*

6 **(b) APPLICATION.**—*For fiscal year 2011, the Secretary*
7 *of Health and Human Services may implement the amend-*
8 *ment made by subsection (a) by posting on the Internet*
9 *website of the Centers for Medicare & Medicaid Services a*
10 *list of the areas and the hospitals whose reclassifications*
11 *will be extended pursuant to such amendment. Hospitals*
12 *located in or reclassified to labor market areas that are af-*
13 *ected by such extension may terminate or withdraw their*
14 *reclassifications by following the procedures included in sec-*
15 *tion 412.273 of title 42, Code of Federal Regulations, except*
16 *that any request for such termination or withdrawal must*
17 *be received by the Medicare Geographic Classification Re-*
18 *view Board not later than the date that is 5 business days*
19 *after the day of such posting on the Internet website of the*
20 *Centers for Medicare & Medicaid Services or June 18, 2010,*
21 *whichever date is later.*

22 **(c) CONFORMING AMENDMENT.**—*Section 117(a)(3) of*
23 *the Medicare, Medicaid, and SCHIP Extension Act of 2007*
24 *(Public Law 110–173)), is amended by inserting “in fiscal*

1 *years 2008 and 2009” after “For purposes of implementa-*
2 *tion of this subsection”.*

3 **SEC. 512. REPEAL OF DELAY OF RUG-IV.**

4 *Effective as if included in the enactment of Public Law*
5 *111–148, section 10325 of such Act is repealed.*

6 **SEC. 513. LIMITATION ON REASONABLE COSTS PAYMENTS**
7 **FOR CERTAIN CLINICAL DIAGNOSTIC LAB-**
8 **ORATORY TESTS FURNISHED TO HOSPITAL**
9 **PATIENTS IN CERTAIN RURAL AREAS.**

10 *Section 3122 of Public Law 111–148 is repealed and*
11 *the provision of law amended by such section is restored*
12 *as if such section had not been enacted.*

13 **SEC. 514. FUNDING FOR CLAIMS REPROCESSING.**

14 *For purposes of carrying out the provisions of, and*
15 *amendments made by, this Act that relate to title XVIII*
16 *of the Social Security Act, and other provisions of such title*
17 *that involve reprocessing of claims, there are appropriated*
18 *to the Secretary of Health and Human Services for the Cen-*
19 *ters for Medicare & Medicaid Services Program Manage-*
20 *ment Account, from amounts in the general fund of the*
21 *Treasury not otherwise appropriated, \$175,000,000.*
22 *Amounts appropriated under the preceding sentence shall*
23 *remain available until expended.*

1 **SEC. 515. MEDICAID AND CHIP TECHNICAL CORRECTIONS.**

2 (a) *REPEAL OF EXCLUSION OF CERTAIN INDIVIDUALS*
3 *AND ENTITIES FROM MEDICAID.*—Section 6502 of Public
4 Law 111–148 is repealed and the provisions of law amend-
5 ed by such section are restored as if such section had never
6 been enacted. Nothing in the previous sentence shall affect
7 the execution or placement of the insertion made by section
8 6503 of such Act.

9 (b) *INCOME LEVEL FOR CERTAIN CHILDREN UNDER*
10 *MEDICAID.*—Effective as if included in the enactment of
11 Public Law 111–148, section 2001(a)(5)(B) of such Act is
12 amended by striking all that follows “is amended” and in-
13 serting the following: “by inserting after ‘100 percent’ the
14 following: ‘(or, beginning January 1, 2014, 133 percent)’.”.

15 (c) *CALCULATION AND PUBLICATION OF PAYMENT*
16 *ERROR RATE MEASUREMENT FOR CERTAIN YEARS.*—Sec-
17 tion 601(b) of the Children’s Health Insurance Program Re-
18 authorization Act of 2009 (Public Law 111–3) is amended
19 by adding at the end the following: “The Secretary is not
20 required under this subsection to calculate or publish a na-
21 tional or a State-specific error rate for fiscal year 2009 or
22 fiscal year 2010.”.

23 (d) *CORRECTIONS TO EXCEPTIONS TO EXCLUSION OF*
24 *CHILDREN OF CERTAIN EMPLOYEES.*—Section 2110(b)(6)
25 of the Social Security Act (42 U.S.C. 1397jj(b)(6)) is
26 amended—

1 (1) *in subparagraph (B)—*

2 (A) *by striking “PER PERSON” in the head-*
3 *ing; and*

4 (B) *by striking “each employee” and insert-*
5 *ing “employees”; and*

6 (2) *in subparagraph (C), by striking “, on a*
7 *case-by-case basis,”.*

8 (e) *ELECTRONIC HEALTH RECORDS.—Effective as if*
9 *included in the enactment of section 4201(a)(2) of the*
10 *American Recovery and Reinvestment Act of 2009 (Public*
11 *Law 111–5), section 1903(t) of the Social Security Act (42*
12 *U.S.C. 1396b(t)) is amended—*

13 (1) *in paragraph (3)(E), by striking “reduced by*
14 *any payment that is made to such Medicaid provider*
15 *from any other source (other than under this sub-*
16 *section or by a State or local government)” and in-*
17 *serting “reduced by the average payment the Sec-*
18 *retary estimates will be made to such Medicaid pro-*
19 *viders (determined on a percentage or other basis for*
20 *such classes or types of providers as the Secretary*
21 *may specify) from other sources (other than under*
22 *this subsection, or by the Federal government or a*
23 *State or local government)”;* and

24 (2) *in paragraph (6)(B), by inserting before the*
25 *period the following: “and shall be determined to have*

1 *met such responsibility to the extent that the payment*
2 *to the Medicaid provider is not in excess of 85 percent*
3 *of the net average allowable cost”.*

4 *(f) CORRECTIONS OF DESIGNATIONS.—*

5 *(1) Section 1902 of the Social Security Act (42*
6 *U.S.C. 1396a) is amended—*

7 *(A) in subsection (a)(10), in the matter fol-*
8 *lowing subparagraph (G), by striking “and” be-*
9 *fore “(XVI) the medical” and by striking “(XVI*
10 *if” and inserting “(XVII) if”; and*

11 *(B) in subsection (ii)(2), by striking “(XV)”*
12 *and inserting “(XVI)”.*

13 *(2) Section 2107(e)(1) of the Social Security Act*
14 *(42 U.S.C. 1397gg(e)(1)) is amended by redesignating*
15 *the subparagraph (N) of that section added by*
16 *2101(e) of Public Law 111–148 as subparagraph (O).*

17 **SEC. 516. ADDITION OF INPATIENT DRUG DISCOUNT PRO-**
18 **GRAM TO 340B DRUG DISCOUNT PROGRAM.**

19 *(a) ADDITION OF INPATIENT DRUG DISCOUNT.—Title*
20 *III of the Public Health Service Act is amended by insert-*
21 *ing after section 340B (42 U.S.C. 256b) the following:*

1 **“SEC. 340B-1. DISCOUNT INPATIENT DRUGS FOR INDIVID-**
2 **UALS WITHOUT PRESCRIPTION DRUG COV-**
3 **ERAGE.**

4 *“(a) REQUIREMENTS FOR AGREEMENTS WITH THE*
5 *SECRETARY.—*

6 *“(1) IN GENERAL.—*

7 *“(A) AGREEMENT.—The Secretary shall*
8 *enter into an agreement with each manufacturer*
9 *of covered inpatient drugs under which the*
10 *amount required to be paid (taking into account*
11 *any rebate or discount, as provided by the Sec-*
12 *retary) to the manufacturer for covered inpatient*
13 *drugs (other than drugs described in paragraph*
14 *(3)) purchased by a covered entity on or after*
15 *January 1, 2011, does not exceed an amount*
16 *equal to the average manufacturer price for the*
17 *drug under title XIX of the Social Security Act*
18 *in the preceding calendar quarter, reduced by the*
19 *rebate percentage described in paragraph (2).*
20 *For a covered inpatient drug that also is a cov-*
21 *ered outpatient drug under section 340B, the*
22 *amount required to be paid under the preceding*
23 *sentence shall be equal to the amount required to*
24 *be paid under section 340B(a)(1) for such drug.*
25 *The agreement with a manufacturer under this*
26 *subparagraph may, at the discretion of the Sec-*

1 retary, be included in the agreement with the
2 same manufacturer under section 340B.

3 “(B) *CEILING PRICE.*—Each such agreement
4 shall require that the manufacturer furnish the
5 Secretary with reports, on a quarterly basis, of
6 the price for each covered inpatient drug subject
7 to the agreement that, according to the manufac-
8 turer, represents the maximum price that covered
9 entities may permissibly be required to pay for
10 the drug (referred to in this section as the ‘ceil-
11 ing price’), and shall require that the manufac-
12 turer offer each covered entity covered inpatient
13 drugs for purchase at or below the applicable
14 ceiling price if such drug is made available to
15 any other purchaser at any price.

16 “(C) *ALLOCATION METHOD.*—Each such
17 agreement shall require that, if the supply of a
18 covered inpatient drug is insufficient to meet de-
19 mand, then the manufacturer may use an alloca-
20 tion method that is reported in writing to, and
21 approved by, the Secretary and does not dis-
22 criminate on the basis of the price paid by cov-
23 ered entities or on any other basis related to the
24 participation of an entity in the program under
25 this section.

1 “(2) *REBATE PERCENTAGE DEFINED.*—

2 “(A) *IN GENERAL.*—*For a covered inpatient*
3 *drug purchased in a calendar quarter, the ‘rebate*
4 *percentage’ is the amount (expressed as a per-*
5 *centage) equal to—*

6 “(i) *the average total rebate required*
7 *under section 1927(c) of the Social Security*
8 *Act (or the average total rebate that would*
9 *be required if the drug were a covered out-*
10 *patient drug under such section) with re-*
11 *spect to the drug (for a unit of the dosage*
12 *form and strength involved) during the pre-*
13 *ceding calendar quarter; divided by*

14 “(ii) *the average manufacturer price*
15 *for such a unit of the drug during such*
16 *quarter.*

17 “(B) *OVER THE COUNTER DRUGS.*—

18 “(i) *IN GENERAL.*—*For purposes of*
19 *subparagraph (A), in the case of over the*
20 *counter drugs, the ‘rebate percentage’ shall*
21 *be determined as if the rebate required*
22 *under section 1927(c) of the Social Security*
23 *Act is based on the applicable percentage*
24 *provided under section 1927(c)(3) of such*
25 *Act.*

1 “(ii) *DEFINITION.*—*The term ‘over the*
2 *counter drug’ means a drug that may be*
3 *sold without a prescription and which is*
4 *prescribed by a physician (or other persons*
5 *authorized to prescribe such drug under*
6 *State law).*

7 “(3) *DRUGS PROVIDED UNDER STATE MEDICAID*
8 *PLANS.*—*Drugs described in this paragraph are drugs*
9 *purchased by the entity for which payment is made*
10 *by the State under the State plan for medical assist-*
11 *ance under title XIX of the Social Security Act.*

12 “(4) *REQUIREMENTS FOR COVERED ENTITIES.*—

13 “(A) *PROHIBITING DUPLICATE DISCOUNTS*
14 *OR REBATES.*—

15 “(i) *IN GENERAL.*—*A covered entity*
16 *shall not request payment under title XIX*
17 *of the Social Security Act for medical as-*
18 *sistance described in section 1905(a)(12) of*
19 *such Act with respect to a drug that is sub-*
20 *ject to an agreement under this section if*
21 *the drug is subject to the payment of a re-*
22 *bate to the State under section 1927 of such*
23 *Act.*

24 “(ii) *ESTABLISHMENT OF MECHA-*
25 *NISM.*—*The Secretary shall establish a*

1 *mechanism to ensure that covered entities*
2 *comply with clause (i). If the Secretary does*
3 *not establish a mechanism under the pre-*
4 *vious sentence within 12 months of the en-*
5 *actment of this section, the requirements of*
6 *section 1927(a)(5)(C) of the Social Security*
7 *Act shall apply.*

8 “(iii) *PROHIBITING DISCLOSURE TO*
9 *GROUP PURCHASING ORGANIZATIONS.—In*
10 *the event that a covered entity is a member*
11 *of a group purchasing organization, such*
12 *entity shall not disclose the price or any*
13 *other information pertaining to any pur-*
14 *chases under this section directly or indi-*
15 *rectly to such group purchasing organiza-*
16 *tion.*

17 “(B) *PROHIBITING RESALE, DISPENSING,*
18 *OR ADMINISTRATION OF DRUGS EXCEPT TO CER-*
19 *TAIN PATIENTS.—With respect to any covered in-*
20 *patient drug that is subject to an agreement*
21 *under this subsection, a covered entity shall not*
22 *dispense, administer, resell, or otherwise transfer*
23 *the covered inpatient drug to a person unless—*

24 “(i) *such person is a patient of the en-*
25 *tity; and*

1 “(ii) such person does not have health
2 plan coverage (as defined in subsection
3 (c)(3)) that provides prescription drug cov-
4 erage in the inpatient setting with respect
5 to such covered inpatient drug.

6 For purposes of clause (ii), a person shall be
7 treated as having health plan coverage (as de-
8 fined in subsection (c)(3)) with respect to a cov-
9 ered inpatient drug if benefits are not payable
10 under such coverage with respect to such drug for
11 reasons such as the application of a deductible or
12 cost sharing or the use of utilization manage-
13 ment.

14 “(C) AUDITING.—A covered entity shall per-
15 mit the Secretary and the manufacturer of a cov-
16 ered inpatient drug that is subject to an agree-
17 ment under this subsection with the entity (act-
18 ing in accordance with procedures established by
19 the Secretary relating to the number, duration,
20 and scope of audits) to audit at the Secretary’s
21 or the manufacturer’s expense the records of the
22 entity that directly pertain to the entity’s com-
23 pliance with the requirements described in sub-
24 paragraph (A) or (B) with respect to drugs of
25 the manufacturer. The use or disclosure of infor-

1 *mation for performance of such an audit shall be*
2 *treated as a use or disclosure required by law for*
3 *purposes of section 164.512(a) of title 45, Code*
4 *of Federal Regulations.*

5 *“(D) ADDITIONAL SANCTION FOR NON-*
6 *COMPLIANCE.—If the Secretary finds, after no-*
7 *tice and hearing, that a covered entity is in vio-*
8 *lation of a requirement described in subpara-*
9 *graph (A) or (B), the covered entity shall be lia-*
10 *ble to the manufacturer of the covered inpatient*
11 *drug that is the subject of the violation in an*
12 *amount equal to the reduction in the price of the*
13 *drug (as described in subparagraph (A)) pro-*
14 *vided under the agreement between the Secretary*
15 *and the manufacturer under this subsection.*

16 *“(E) MAINTENANCE OF RECORDS.—*

17 *“(i) IN GENERAL.—A covered entity*
18 *shall establish and maintain an effective*
19 *recordkeeping system to comply with this*
20 *section and shall certify to the Secretary*
21 *that such entity is in compliance with sub-*
22 *paragraphs (A) and (B). The Secretary*
23 *shall require that hospitals that purchase*
24 *covered inpatient drugs for inpatient dis-*
25 *persing or administration under this sub-*

1 *section appropriately segregate inventory of*
2 *such covered inpatient drugs, either phys-*
3 *ically or electronically, from drugs for out-*
4 *patient use, as well as from drugs for inpa-*
5 *tient dispensing or administration to indi-*
6 *viduals who have (for purposes of subpara-*
7 *graph (B)) health plan coverage described*
8 *in clause (ii) of such subparagraph.*

9 *“(ii) CERTIFICATION OF NO THIRD-*
10 *PARTY PAYER.—A covered entity shall*
11 *maintain records that contain certification*
12 *by the covered entity that no third party*
13 *payment was received for any covered inpa-*
14 *tient drug that is subject to an agreement*
15 *under this subsection and that was dis-*
16 *persed to an inpatient.*

17 *“(5) TREATMENT OF DISTINCT UNITS OF HOS-*
18 *PITALS.—In the case of a covered entity that is a dis-*
19 *tinct part of a hospital, the distinct part of the hos-*
20 *pital shall not be considered a covered entity under*
21 *this subsection unless the hospital is otherwise a cov-*
22 *ered entity under this subsection.*

23 *“(6) NOTICE TO MANUFACTURERS.—The Sec-*
24 *retary shall notify manufacturers of covered inpatient*
25 *drugs and single State agencies under section*

1 1902(a)(5) of the Social Security Act of the identities
2 of covered entities under this subsection, and of enti-
3 ties that no longer meet the requirements of para-
4 graph (4), by means of timely updates of the Internet
5 website supported by the Department of Health and
6 Human Services relating to this section.

7 “(7) NO PROHIBITION ON LARGER DISCOUNT.—
8 Nothing in this subsection shall prohibit a manufac-
9 turer from charging a price for a drug that is lower
10 than the maximum price that may be charged under
11 paragraph (1).

12 “(b) COVERED ENTITY DEFINED.—In this section, the
13 term ‘covered entity’ means an entity that meets the re-
14 quirements described in subsection (a)(4) and is one of the
15 following:

16 “(1) A subsection (d) hospital (as defined in sec-
17 tion 1886(d)(1)(B) of the Social Security Act) that—

18 “(A) is owned or operated by a unit of
19 State or local government, is a public or private
20 non-profit corporation which is formally granted
21 governmental powers by a unit of State or local
22 government, or is a private nonprofit hospital
23 which has a contract with a State or local gov-
24 ernment to provide health care services to low in-
25 come individuals who are not entitled to benefits

1 *under title XVIII of the Social Security Act or*
2 *eligible for assistance under the State plan for*
3 *medical assistance under title XIX of such Act;*
4 *and*

5 *“(B) for the most recent cost reporting pe-*
6 *riod that ended before the calendar quarter in-*
7 *volved, had a disproportionate share adjustment*
8 *percentage (as determined using the methodology*
9 *under section 1886(d)(5)(F) of the Social Secu-*
10 *rity Act as in effect on the date of enactment of*
11 *this section) greater than 20.20 percent or was*
12 *described in section 1886(d)(5)(F)(i)(II) of such*
13 *Act (as so in effect on the date of enactment of*
14 *this section).*

15 *“(2) A children’s hospital excluded from the*
16 *Medicare prospective payment system pursuant to*
17 *section 1886(d)(1)(B)(iii) of the Social Security Act*
18 *that would meet the requirements of paragraph (1),*
19 *including the disproportionate share adjustment per-*
20 *centage requirement under subparagraph (B) of such*
21 *paragraph, if the hospital were a subsection (d) hos-*
22 *pital as defined by section 1886(d)(1)(B) of the Social*
23 *Security Act.*

24 *“(3) A free-standing cancer hospital excluded*
25 *from the Medicare prospective payment system pursu-*

1 *ant to section 1886(d)(1)(B)(v) of the Social Security*
2 *Act that would meet the requirements of paragraph*
3 *(1), including the disproportionate share adjustment*
4 *percentage requirement under subparagraph (B) of*
5 *such paragraph, if the hospital were a subsection (d)*
6 *hospital as defined by section 1886(d)(1)(B) of the*
7 *Social Security Act.*

8 *“(4) An entity that is a critical access hospital*
9 *(as determined under section 1820(c)(2) of the Social*
10 *Security Act), and that meets the requirements of*
11 *paragraph (1)(A).*

12 *“(5) An entity that is a rural referral center, as*
13 *defined by section 1886(d)(5)(C)(i) of the Social Secu-*
14 *rity Act, or a sole community hospital, as defined by*
15 *section 1886(d)(5)(C)(iii) of such Act, and that both*
16 *meets the requirements of paragraph (1)(A) and has*
17 *a disproportionate share adjustment percentage equal*
18 *to or greater than 8 percent.*

19 *“(c) OTHER DEFINITIONS.—In this section:*

20 *“(1) AVERAGE MANUFACTURER PRICE.—*

21 *“(A) IN GENERAL.—The term ‘average*
22 *manufacturer price’—*

23 *“(i) has the meaning given such term*
24 *in section 1927(k) of the Social Security*
25 *Act, except that such term shall be applied*

1 *under this section with respect to covered*
2 *inpatient drugs in the same manner (as ap-*
3 *plicable) as such term is applied under such*
4 *section 1927(k) with respect to covered out-*
5 *patient drugs (as defined in such section);*
6 *and*

7 *“(i) with respect to a covered inpa-*
8 *tient drug for which there is no average*
9 *manufacturer price (as defined in clause*
10 *(i)), shall be the amount determined under*
11 *regulations promulgated by the Secretary*
12 *under subparagraph (B).*

13 *“(B) RULEMAKING.—The Secretary shall by*
14 *regulation, in consultation with the Adminis-*
15 *trator of the Centers for Medicare & Medicaid*
16 *Services, establish a method for determining the*
17 *average manufacturer price for covered inpatient*
18 *drugs for which there is no average manufacturer*
19 *price (as defined in subparagraph (A)(i)). Regu-*
20 *lations promulgated with respect to covered in-*
21 *patient drugs under the preceding sentence shall*
22 *provide for the application of methods for deter-*
23 *mining the average manufacturer price that are*
24 *the same as the methods used to determine such*
25 *price in calculating rebates required for such*

1 *drugs under an agreement between a manufac-*
2 *turer and a State that satisfies the requirements*
3 *of section 1927(b) of the Social Security Act, as*
4 *applicable.*

5 “(2) *COVERED INPATIENT DRUG.*—*The term ‘cov-*
6 *ered inpatient drug’ means a drug—*

7 “(A) *that is described in section 1927(k)(2)*
8 *of the Social Security Act;*

9 “(B) *that, notwithstanding paragraph*
10 *(3)(A) of section 1927(k) of such Act, is used in*
11 *connection with an inpatient service provided by*
12 *a covered entity that is enrolled to participate in*
13 *the drug discount program under this section;*
14 *and*

15 “(C) *that is not purchased by the covered*
16 *entity through or under contract with a group*
17 *purchasing organization.*

18 “(3) *HEALTH PLAN COVERAGE.*—*The term*
19 *‘health plan coverage’ means—*

20 “(A) *health insurance coverage (as defined*
21 *in section 2791, and including coverage under a*
22 *State health benefits risk pool);*

23 “(B) *coverage under a group health plan*
24 *(as defined in such section, and including cov-*

1 *erage under a church plan, a governmental plan,*
2 *or a collectively bargained plan);*

3 *“(C) coverage under a Federal health care*
4 *program (as defined by section 1128B(f) of the*
5 *Social Security Act); or*

6 *“(D) such other health benefits coverage as*
7 *the Secretary recognizes for purposes of this sec-*
8 *tion.*

9 *“(4) MANUFACTURER.—The term ‘manufacturer’*
10 *has the meaning given such term in section 1927(k)*
11 *of the Social Security Act.*

12 *“(d) PROGRAM INTEGRITY.—*

13 *“(1) MANUFACTURER COMPLIANCE.—*

14 *“(A) IN GENERAL.—From amounts appro-*
15 *priated under subsection (f), the Secretary shall*
16 *provide for improvements in compliance by*
17 *manufacturers with the requirements of this sec-*
18 *tion in order to prevent overcharges and other*
19 *violations of the discounted pricing requirements*
20 *specified in this section.*

21 *“(B) IMPROVEMENTS.—The improvements*
22 *described in subparagraph (A) shall include the*
23 *following:*

24 *“(i) The establishment of a process to*
25 *enable the Secretary to verify the accuracy*

1 of ceiling prices calculated by manufactur-
2 ers under subsection (a)(1) and charged to
3 covered entities, which shall include the fol-
4 lowing:

5 “(I) Developing and publishing
6 through an appropriate policy or regu-
7 latory issuance, precisely defined
8 standards and methodology for the cal-
9 culation of ceiling prices under such
10 subsection.

11 “(II) Comparing regularly the
12 ceiling prices calculated by the Sec-
13 retary with the quarterly pricing data
14 that is reported by manufacturers to
15 the Secretary.

16 “(III) Conducting periodic moni-
17 toring of sales transactions by covered
18 entities.

19 “(IV) Inquiring into any discrep-
20 ancies between ceiling prices and man-
21 ufacturer pricing data that may be
22 identified and taking, or requiring
23 manufacturers to take, corrective ac-
24 tion in response to such discrepancies,
25 including the issuance of refunds pur-

1 *suant to the procedures set forth in*
2 *clause (ii).*

3 *“(ii) The establishment of procedures*
4 *for manufacturers to issue refunds to cov-*
5 *ered entities in the event that there is an*
6 *overcharge by the manufacturers, including*
7 *the following:*

8 *“(I) Providing the Secretary with*
9 *an explanation of why and how the*
10 *overcharge occurred, how the refunds*
11 *will be calculated, and to whom the re-*
12 *funds will be issued.*

13 *“(II) Oversight by the Secretary*
14 *to ensure that the refunds are issued*
15 *accurately and within a reasonable pe-*
16 *riod of time.*

17 *“(iii) The provision of access through*
18 *the Internet website supported by the De-*
19 *partment of Health and Human Services to*
20 *the applicable ceiling prices for covered in-*
21 *patient drugs as calculated and verified by*
22 *the Secretary in accordance with this sec-*
23 *tion, in a manner (such as through the use*
24 *of password protection) that limits such ac-*
25 *cess to covered entities and adequately*

1 *assures security and protection of privileged*
2 *pricing data from unauthorized re-disclo-*
3 *sure.*

4 “(iv) *The development of a mechanism*
5 *by which—*

6 “(I) *rebates, discounts, or other*
7 *price concessions provided by manufac-*
8 *turers to other purchasers subsequent to*
9 *the sale of covered inpatient drugs to*
10 *covered entities are reported to the Sec-*
11 *retary; and*

12 “(II) *appropriate credits and re-*
13 *funds are issued to covered entities if*
14 *such discounts, rebates, or other price*
15 *concessions have the effect of lowering*
16 *the applicable ceiling price for the rel-*
17 *evant quarter for the drugs involved.*

18 “(v) *Selective auditing of manufactur-*
19 *ers and wholesalers to ensure the integrity*
20 *of the drug discount program under this*
21 *section.*

22 “(vi) *The establishment of a require-*
23 *ment that manufacturers and wholesalers*
24 *use the identification system developed by*
25 *the Secretary for purposes of facilitating the*

1 *ordering, purchasing, and delivery of cov-*
2 *ered inpatient drugs under this section, in-*
3 *cluding the processing of chargebacks for*
4 *such drugs.*

5 *“(vii) The imposition of sanctions in*
6 *the form of civil monetary penalties,*
7 *which—*

8 *“(I) shall be assessed according to*
9 *standards and procedures established*
10 *in regulations to be promulgated by the*
11 *Secretary not later than January 1,*
12 *2011;*

13 *“(II) shall not exceed \$10,000 per*
14 *single dosage form of a covered inpa-*
15 *tient drug purchased by a covered enti-*
16 *ty where a manufacturer knowingly*
17 *charges such covered entity a price for*
18 *such drug that exceeds the ceiling price*
19 *under subsection (a)(1); and*

20 *“(III) shall not exceed \$100,000*
21 *for each instance where a manufac-*
22 *turer withholds or provides materially*
23 *false information to the Secretary or to*
24 *covered entities under this section or*
25 *knowingly violates any provision of*

1 *this section (other than subsection*
2 *(a)(1)).*

3 “(2) *COVERED ENTITY COMPLIANCE.*—

4 “(A) *IN GENERAL.*—*From amounts appro-*
5 *priated under subsection (f), the Secretary shall*
6 *provide for improvements in compliance by cov-*
7 *ered entities with the requirements of this section*
8 *in order to prevent diversion and violations of*
9 *the duplicate discount provision and other re-*
10 *quirements specified under subsection (a)(4).*

11 “(B) *IMPROVEMENTS.*—*The improvements*
12 *described in subparagraph (A) shall include the*
13 *following:*

14 “(i) *The development of procedures to*
15 *enable and require covered entities to up-*
16 *date at least annually the information on*
17 *the Internet website supported by the De-*
18 *partment of Health and Human Services*
19 *relating to this section.*

20 “(ii) *The development of procedures for*
21 *the Secretary to verify the accuracy of in-*
22 *formation regarding covered entities that is*
23 *listed on the website described in clause (i).*

24 “(iii) *The development of more detailed*
25 *guidance describing methodologies and op-*

1 *tions available to covered entities for billing*
2 *covered inpatient drugs to State Medicaid*
3 *agencies in a manner that avoids duplicate*
4 *discounts pursuant to subsection (a)(4)(A).*

5 *“(iv) The establishment of a single,*
6 *universal, and standardized identification*
7 *system by which each covered entity site*
8 *and each covered entity’s purchasing status*
9 *under sections 340B and this section can be*
10 *identified by manufacturers, distributors,*
11 *covered entities, and the Secretary for pur-*
12 *poses of facilitating the ordering, pur-*
13 *chasing, and delivery of covered inpatient*
14 *drugs under this section, including the proc-*
15 *essing of chargebacks for such drugs.*

16 *“(v) The imposition of sanctions in the*
17 *form of civil monetary penalties, which—*

18 *“(I) shall be assessed according to*
19 *standards and procedures established*
20 *in regulations promulgated by the Sec-*
21 *retary; and*

22 *“(II) shall not exceed \$10,000 for*
23 *each instance where a covered entity*
24 *knowingly violates subsection (a)(4)(B)*

1 or knowingly violates any other provi-
2 sion of this section.

3 “(vi) *The termination of a covered en-*
4 *tity’s participation in the program under*
5 *this section, for a period of time to be deter-*
6 *mined by the Secretary, in cases in which*
7 *the Secretary determines, in accordance*
8 *with standards and procedures established*
9 *by regulation, that—*

10 “(I) *the violation by a covered en-*
11 *tity of a requirement of this section*
12 *was repeated and knowing; and*

13 “(II) *imposition of a monetary*
14 *penalty would be insufficient to rea-*
15 *sonably ensure compliance with the re-*
16 *quirements of this section.*

17 “(vii) *The referral of matters, as ap-*
18 *propriate, to the Food and Drug Adminis-*
19 *tration, the Office of the Inspector General*
20 *of the Department of Health and Human*
21 *Services, or other Federal or State agencies.*

22 “(3) *ADMINISTRATIVE DISPUTE RESOLUTION*
23 *PROCESS.—From amounts appropriated under sub-*
24 *section (f), the Secretary may establish and imple-*

1 *ment an administrative process for the resolution of*
2 *the following:*

3 *“(A) Claims by covered entities that manu-*
4 *facturers have violated the terms of their agree-*
5 *ment with the Secretary under subsection (a)(1).*

6 *“(B) Claims by manufacturers that covered*
7 *entities have violated subsection (a)(4)(A) or*
8 *(a)(4)(B).*

9 *“(e) AUDIT AND SANCTIONS.—*

10 *“(1) AUDIT.—From amounts appropriated*
11 *under subsection (f), the Inspector General of the De-*
12 *partment of Health and Human Services (referred to*
13 *in this subsection as the ‘Inspector General’) shall*
14 *audit covered entities under this section to verify*
15 *compliance with criteria for eligibility and participa-*
16 *tion under this section, including the antidiversion*
17 *prohibitions under subsection (a)(4)(B), and take en-*
18 *forcement action or provide information to the Sec-*
19 *retary who shall take action to ensure program com-*
20 *pliance, as appropriate. A covered entity shall pro-*
21 *vide to the Inspector General, upon request, records*
22 *relevant to such audits.*

23 *“(2) REPORT.—For each audit conducted under*
24 *paragraph (1), the Inspector General shall prepare*

1 *and publish in a timely manner a report which shall*
2 *include findings and recommendations regarding—*

3 “(A) *the appropriateness of covered entity*
4 *eligibility determinations and, as applicable, cer-*
5 *tifications;*

6 “(B) *the effectiveness of antidiversion prohi-*
7 *bitions; and*

8 “(C) *the effectiveness of restrictions on in-*
9 *patient dispensing and administration.*

10 “(f) *AUTHORIZATION OF APPROPRIATIONS.—There are*
11 *authorized to be appropriated to carry out this section such*
12 *sums as may be necessary for fiscal year 2011 and each*
13 *succeeding fiscal year.”.*

14 “(b) *RULEMAKING.—Not later than January 1, 2011,*
15 *the Secretary shall promulgate regulations implementing*
16 *section 340B–1 of the Public Health Service Act (as added*
17 *by subsection (a)).*

18 “(c) *CONFORMING AMENDMENT TO SECTION 340B.—*
19 *Paragraph (1) of section 340B(a) of the Public Health Serv-*
20 *ice Act (42 U.S.C. 256b(a)) is amended by adding at the*
21 *end the following: “Such agreement shall further require*
22 *that, if the supply of a covered outpatient drug is insuffi-*
23 *cient to meet demand, then the manufacturer may use an*
24 *allocation method that is reported in writing to, and ap-*
25 *proved by, the Secretary and does not discriminate on the*

1 *basis of the price paid by covered entities or on any other*
2 *basis related to the participation of an entity in the pro-*
3 *gram under this section. The agreement with a manufac-*
4 *turer under this paragraph may, at the discretion of the*
5 *Secretary, be included in the agreement with the same man-*
6 *ufacturer under section 340B-1.”.*

7 *(d) CONFORMING AMENDMENTS TO MEDICAID.—Sec-*
8 *tion 1927 of the Social Security Act (42 U.S.C. 1396r-8)*
9 *is amended—*

10 *(1) in subsection (a)—*

11 *(A) in paragraph (1), in the first sentence,*
12 *by striking “and paragraph (6)” and inserting*
13 *“, paragraph (6), and paragraph (8)”;* and

14 *(B) by adding at the end the following new*
15 *paragraph:*

16 *“(8) LIMITATION ON PRICES OF DRUGS PUR-*
17 *CHASED BY 340B-1-COVERED ENTITIES.—*

18 *“(A) AGREEMENT WITH SECRETARY.—A*
19 *manufacturer meets the requirements of this*
20 *paragraph if the manufacturer has entered into*
21 *an agreement with the Secretary that meets the*
22 *requirements of section 340B-1 of the Public*
23 *Health Service Act with respect to covered inpa-*
24 *tient drugs (as defined in such section) pur-*

1 *chased by a 340B–1-covered entity on or after*
 2 *January 1, 2011.*

3 “(B) *340B–1-COVERED ENTITY DEFINED.*—
 4 *In this subsection, the term ‘340B–1-covered en-*
 5 *tity’ means an entity described in section 340B–*
 6 *1(b) of the Public Health Service Act.’; and*
 7 *(2) in subsection (c)(1)(C)(i)(I)—*

8 *(A) by striking “or” before “a covered enti-*
 9 *ty”; and*

10 *(B) by inserting before the semicolon the fol-*
 11 *lowing: “, or a covered entity for a covered inpa-*
 12 *tient drug (as such terms are defined in section*
 13 *340B–1of the Public Health Service Act)”.*

14 **SEC. 517. CONTINUED INCLUSION OF ORPHAN DRUGS IN**
 15 **DEFINITION OF COVERED OUTPATIENT**
 16 **DRUGS WITH RESPECT TO CHILDREN’S HOS-**
 17 **PITALS UNDER THE 340B DRUG DISCOUNT**
 18 **PROGRAM.**

19 *(a) DEFINITION OF COVERED OUTPATIENT DRUG.—*

20 *(1) AMENDMENT.—Subsection (e) of section*
 21 *340B of the Public Health Service Act (42 U.S.C.*
 22 *256b) is amended by striking “covered entities de-*
 23 *scribed in subparagraph (M)”and inserting “covered*
 24 *entities described in subparagraph (M) (other than a*
 25 *children’s hospital described in subparagraph (M))”.*

1 (2) *EFFECTIVE DATE.*—*The amendment made by*
2 *paragraph (1) shall take effect as if included in the*
3 *enactment of section 2302 of the Health Care and*
4 *Education Reconciliation Act of 2010 (Public Law*
5 *111–152).*

6 (b) *TECHNICAL AMENDMENT.*—*Subparagraph (B) of*
7 *section 1927(a)(5) of the Social Security Act (42 U.S.C.*
8 *1396r–8(a)(5)) is amended by striking “and a children’s*
9 *hospital” and all that follows through the end of the sub-*
10 *paragraph and inserting a period.*

11 **SEC. 518. CONFORMING AMENDMENT RELATED TO WAIVER**
12 **OF COINSURANCE FOR PREVENTIVE SERV-**
13 **ICES.**

14 *Effective as if included in section 10501(i)(2)(A) of*
15 *Public Law 111–148, section 1833(a)(3)(A) of the Social*
16 *Security Act (42 U.S.C. 1395l(a)(3)(A)) is amended by*
17 *striking “section 1861(s)(10)(A)” and inserting “section*
18 *1861(ddd)(3)”.*

19 **SEC. 519. ESTABLISH A CMS-IRS DATA MATCH TO IDENTIFY**
20 **FRAUDULENT PROVIDERS.**

21 (a) *AUTHORITY TO DISCLOSE RETURN INFORMATION*
22 *CONCERNING OUTSTANDING TAX DEBTS FOR PURPOSES OF*
23 *ENHANCING MEDICARE PROGRAM INTEGRITY.*—

1 (1) *IN GENERAL.*—Section 6103(l) of the *Inter-*
2 *nal Revenue Code of 1986* is amended by adding at
3 *the end the following new paragraph:*

4 “(22) *DISCLOSURE OF RETURN INFORMATION TO*
5 *DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR*
6 *PURPOSES OF ENHANCING MEDICARE PROGRAM IN-*
7 *TEGRITY.*—

8 “(A) *IN GENERAL.*—*The Secretary shall,*
9 *upon written request from the Secretary of*
10 *Health and Human Services, disclose to officers*
11 *and employees of the Department of Health and*
12 *Human Services return information with respect*
13 *to a taxpayer who has applied to enroll, or re-*
14 *enroll, as a provider of services or supplier under*
15 *the Medicare program under title XVIII of the*
16 *Social Security Act. Such return information*
17 *shall be limited to—*

18 “(i) *the taxpayer identity information*
19 *with respect to such taxpayer;*

20 “(ii) *the amount of the delinquent tax*
21 *debt owed by that taxpayer; and*

22 “(iii) *the taxable year to which the de-*
23 *linquent tax debt pertains.*

24 “(B) *RESTRICTION ON DISCLOSURE.*—*Re-*
25 *turn information disclosed under subparagraph*

1 (A) may be used by officers and employees of the
2 Department of Health and Human Services for
3 the purposes of, and to the extent necessary in,
4 establishing the taxpayer's eligibility for enroll-
5 ment or reenrollment in the Medicare program,
6 or in any administrative or judicial proceeding
7 relating to, or arising from, a denial of such en-
8 rollment or reenrollment, or in determining the
9 level of enhanced oversight to be applied with re-
10 spect to such taxpayer pursuant to section
11 1866(j)(3) of the Social Security Act.

12 “(C) *DELINQUENT TAX DEBT.*—For pur-
13 poses of this paragraph, the term ‘delinquent tax
14 debt’ means an outstanding debt under this title
15 for which a notice of lien has been filed pursuant
16 to section 6323, but the term does not include a
17 debt that is being paid in a timely manner pur-
18 suant to an agreement under section 6159 or
19 7122, or a debt with respect to which a collection
20 due process hearing under section 6330 is re-
21 quested, pending, or completed and no payment
22 is required.”.

23 (2) *CONFORMING AMENDMENTS.*—Section
24 6103(p)(4) of such Code, as amended by sections 1414
25 and 3308 of Public Law 111–148, in the matter pre-

1 ceding subparagraph (A) and in subparagraph
2 (F)(ii), is amended by striking “or (17)” and insert-
3 ing “(17), or (22)” each place it appears.

4 (b) *SECRETARY’S AUTHORITY TO USE INFORMATION*
5 *FROM THE DEPARTMENT OF TREASURY IN MEDICARE EN-*
6 *ROLLMENTS AND REENROLLMENTS.*—Section 1866(j)(2) of
7 *the Social Security Act (42 U.S.C. 1395cc(j)), as inserted*
8 *by section 6401(a) of Public Law 111–148, is further*
9 *amended—*

10 (1) *by redesignating subparagraph (E) as sub-*
11 *paragraph (F); and*

12 (2) *by inserting after subparagraph (D) the fol-*
13 *lowing new subparagraph:*

14 “(E) *USE OF INFORMATION FROM THE DE-*
15 *PARTMENT OF TREASURY CONCERNING TAX*
16 *DEBTS.*—*In reviewing the application of a pro-*
17 *vider of services or supplier to enroll or reenroll*
18 *under the program under this title, the Secretary*
19 *shall take into account the information supplied*
20 *by the Secretary of the Treasury pursuant to sec-*
21 *tion 6103(l)(22) of the Internal Revenue Code of*
22 *1986, in determining whether to deny such ap-*
23 *plication or to apply enhanced oversight to such*
24 *provider of services or supplier pursuant to*
25 *paragraph (3) if the Secretary determines such*

1 provider of services or supplier owes such a
2 debt.”.

3 (c) *AUTHORITY TO ADJUST PAYMENTS OF PROVIDERS*
4 *OF SERVICES AND SUPPLIERS WITH THE SAME TAX IDEN-*
5 *TIFICATION NUMBER FOR MEDICARE OBLIGATIONS.*—*Sec-*
6 *tion 1866(j)(5) of the Social Security Act (42 U.S.C.*
7 *1395cc(j)(5)), as inserted by section 6401(a) of Public Law*
8 *111–148, is amended—*

9 (1) *in the paragraph heading, by striking “PAST-*
10 *DUE” and inserting “MEDICARE”;*

11 (2) *in subparagraph (A), by striking “past-due*
12 *obligations described in subparagraph (B)(ii) of an”*
13 *and inserting “amount described in subparagraph*
14 *(B)(ii) due from such”;* and

15 (3) *in subparagraph (B)(ii), by striking “a past-*
16 *due obligation” and inserting “an amount that is*
17 *more than the amount required to be paid”.*

18 **SEC. 520. CLARIFICATION OF EFFECTIVE DATE OF PART B**
19 **SPECIAL ENROLLMENT PERIOD FOR DIS-**
20 **ABLED TRICARE BENEFICIARIES.**

21 *Effective as if included in the enactment of Public Law*
22 *111–148, section 3110(a)(2) of such Act is amended to read*
23 *as follows:*

1 “(2) *EFFECTIVE DATE.*—*The amendment made*
2 *by paragraph (1) shall apply to elections made after*
3 *the date of the enactment of this Act.*”.

4 **SEC. 521. PHYSICIAN PAYMENT UPDATE.**

5 (a) *IN GENERAL.*—*Section 1848(d) of the Social Secu-*
6 *rity Act (42 U.S.C. 1395w-4(d)) is amended—*

7 (1) *in paragraph (10), in the heading, by strik-*
8 *ing “PORTION” and inserting “THE FIRST 5 MONTHS*
9 *”;* and

10 (2) *by adding at the end the following new para-*
11 *graphs:*

12 “(11) *UPDATE FOR THE LAST 7 MONTHS OF*
13 *2010.*—

14 “(A) *IN GENERAL.*—*Subject to paragraphs*
15 *(7)(B), (8)(B), (9)(B), and (10)(B), in lieu of the*
16 *update to the single conversion factor established*
17 *in paragraph (1)(C) that would otherwise apply*
18 *for 2010 for the period beginning on June 1,*
19 *2010, and ending on December 31, 2010, the up-*
20 *date to the single conversion factor shall be 2.2*
21 *percent.*

22 “(B) *NO EFFECT ON COMPUTATION OF CON-*
23 *VERSION FACTOR FOR 2011 AND SUBSEQUENT*
24 *YEARS.*—*The conversion factor under this sub-*
25 *section shall be computed under paragraph*

1 (1)(A) for 2011 and subsequent years as if sub-
2 paragraph (A) had never applied.

3 “(12) UPDATE FOR 2011.—

4 “(A) IN GENERAL.—Subject to paragraphs
5 (7)(B), (8)(B), (9)(B), (10)(B), and (11)(B), in
6 lieu of the update to the single conversion factor
7 established in paragraph (1)(C) that would oth-
8 erwise apply for 2011, the update to the single
9 conversion factor shall be 1.0 percent.

10 “(B) NO EFFECT ON COMPUTATION OF CON-
11 VERSION FACTOR FOR 2012 AND SUBSEQUENT
12 YEARS.—The conversion factor under this sub-
13 section shall be computed under paragraph
14 (1)(A) for 2012 and subsequent years as if sub-
15 paragraph (A) had never applied.”.

16 (b) STATUTORY PAYGO.—The budgetary effects of this
17 Act, for the purpose of complying with the Statutory Pay-
18 As-You-Go Act of 2010, shall be determined by reference to
19 the latest statement titled “Budgetary Effects of PAYGO
20 Legislation” for this Act, jointly submitted for printing in
21 the Congressional Record by the Chairmen of the House and
22 Senate Budget Committees, provided that such statement
23 has been submitted prior to the vote on passage in the House
24 acting first on this conference report or amendment between
25 the Houses.

1 **SEC. 522. ADJUSTMENT TO MEDICARE PAYMENT LOCAL-**
2 **ITIES.**

3 (a) *IN GENERAL.*—Section 1848(e) of the Social Secu-
4 rity Act (42 U.S.C.1395w-4(e)) is amended by adding at
5 the end the following new paragraph:

6 “(6) *TRANSITION TO USE OF MSAS AS FEE*
7 *SCHEDULE AREAS IN CALIFORNIA.*—

8 “(A) *IN GENERAL.*—

9 “(i) *REVISION.*—Subject to clause (ii)
10 and notwithstanding the previous provi-
11 sions of this subsection, for services fur-
12 nished on or after January 1, 2012, the
13 Secretary shall revise the fee schedule areas
14 used for payment under this section appli-
15 cable to the State of California using the
16 Metropolitan Statistical Area (MSA)
17 iterative Geographic Adjustment Factor
18 methodology as follows:

19 “(I) The Secretary shall configure
20 the physician fee schedule areas using
21 the Metropolitan Statistical Areas
22 (each in this paragraph referred to as
23 an ‘MSA’), as defined by the Director
24 of the Office of Management and Budg-
25 et as of the date of the enactment of

1 *this paragraph, as the basis for the fee*
2 *schedule areas.*

3 *“(II) For purposes of this clause,*
4 *the Secretary shall treat all areas not*
5 *included in an MSA as a single rest-*
6 *of-State MSA and any reference in this*
7 *paragraph to an MSA shall be deemed*
8 *to include a reference to such rest-of-*
9 *State MSA.*

10 *“(III) The Secretary shall list all*
11 *MSAs within the State by Geographic*
12 *Adjustment Factor described in para-*
13 *graph (2) (in this paragraph referred*
14 *to as a ‘GAF’) in descending order.*

15 *“(IV) In the first iteration, the*
16 *Secretary shall compare the GAF of the*
17 *highest cost MSA in the State to the*
18 *weighted-average GAF of all the re-*
19 *maining MSAs in the State. If the*
20 *ratio of the GAF of the highest cost*
21 *MSA to the weighted-average of the*
22 *GAF of remaining lower cost MSAs is*
23 *1.05 or greater, the highest cost MSA*
24 *shall be a separate fee schedule area.*

1 “(V) *In the next iteration, the*
2 *Secretary shall compare the GAF of the*
3 *MSA with the second-highest GAF to*
4 *the weighted-average GAF of the all the*
5 *remaining MSAs (excluding MSAs that*
6 *become separate fee schedule areas). If*
7 *the ratio of the second-highest MSA’s*
8 *GAF to the weighted-average of the re-*
9 *maining lower cost MSAs is 1.05 or*
10 *greater, the second-highest MSA shall*
11 *be a separate fee schedule area.*

12 “(VI) *The iterative process shall*
13 *continue until the ratio of the GAF of*
14 *the MSA with highest remaining GAF*
15 *to the weighted-average of the remain-*
16 *ing MSAs with lower GAFs is less*
17 *than 1.05, and the remaining group of*
18 *MSAs with lower GAFs shall be treated*
19 *as a single rest-of-State fee schedule*
20 *area.*

21 “(VII) *For purposes of the*
22 *iterative process described in this*
23 *clause, if two MSAs have identical*
24 *GAFs, they shall be combined.*

1 “(i) *TRANSITION.*—*For services fur-*
2 *nished on or after January 1, 2012, and be-*
3 *fore January 1, 2017, in the State of Cali-*
4 *fornia, after calculating the work, practice*
5 *expense, and malpractice geographic indices*
6 *that would otherwise be determined under*
7 *clauses (i), (ii), and (iii) of paragraph*
8 *(1)(A) for a fee schedule area determined*
9 *under clause (i), if the index for a county*
10 *within a fee schedule area is less than the*
11 *index that would otherwise be in effect for*
12 *such county, the Secretary shall instead*
13 *apply the index that would otherwise be in*
14 *effect for such county.*

15 “(B) *SUBSEQUENT REVISIONS.*—*After the*
16 *transition described in subparagraph (A)(ii), not*
17 *less than every 3 years the Secretary shall review*
18 *and update the fee schedule areas using the*
19 *methodology described in subparagraph (A)(i)*
20 *and any updated MSAs as defined by the Direc-*
21 *tor of the Office of Management and Budget. The*
22 *Secretary shall review and make any changes*
23 *pursuant to such reviews concurrent with the ap-*
24 *plication of the periodic review of the adjustment*

1 *factors required under paragraph (1)(C) for*
2 *California.*

3 “(C) *REFERENCES TO FEE SCHEDULE*
4 *AREAS.—Effective for services furnished on or*
5 *after January 1, 2012, for the State of Cali-*
6 *fornia, any reference in this section to a fee*
7 *schedule area shall be deemed a reference to a fee*
8 *schedule area established in accordance with this*
9 *paragraph.”.*

10 **(b) CONFORMING AMENDMENT TO DEFINITION OF FEE**
11 **SCHEDULE AREA.—***Section 1848(j)(2) of the Social Secu-*
12 *rity Act (42 U.S.C. 1395w(j)(2)) is amended by striking*
13 *“The term” and inserting “Except as provided in sub-*
14 *section (e)(6)(C), the term”.*

15 **SEC. 523. CLARIFICATION OF 3-DAY PAYMENT WINDOW.**

16 **(a) IN GENERAL.—***Section 1886 of the Social Security*
17 *Act (42 U.S.C. 1395ww) is amended—*

18 **(1)** *by adding at the end of subsection (a)(4) the*
19 *following new sentence: “In applying the first sen-*
20 *tence of this paragraph, the term ‘other services re-*
21 *lated to the admission’ includes all services that are*
22 *not diagnostic services (other than ambulance and*
23 *maintenance renal dialysis services) for which pay-*
24 *ment may be made under this title that are provided*

1 *by a hospital (or an entity wholly owned or operated*
2 *by the hospital) to a patient—*

3 *“(A) on the date of the patient’s inpatient*
4 *admission; or*

5 *“(B) during the 3 days (or, in the case of*
6 *a hospital that is not a subsection (d) hospital,*
7 *during the 1 day) immediately preceding the*
8 *date of such admission unless the hospital dem-*
9 *onstrates (in a form and manner, and at a time,*
10 *specified by the Secretary) that such services are*
11 *not related (as determined by the Secretary) to*
12 *such admission.”; and*

13 *(2) in subsection (d)(7)—*

14 *(A) in subparagraph (A), by striking “and”*
15 *at the end;*

16 *(B) in subparagraph (B), by striking the*
17 *period and inserting “, and”; and*

18 *(C) by adding at the end the following new*
19 *subparagraph:*

20 *“(C) the determination of whether services*
21 *provided prior to a patient’s inpatient admis-*
22 *sion are related to the admission (as described in*
23 *subsection (a)(4)).”.*

1 (b) *EFFECTIVE DATE.*—*The amendments made by sub-*
2 *section (a) shall apply to services furnished on or after the*
3 *date of the enactment of this Act.*

4 (c) *NO REOPENING OF PREVIOUSLY BUNDLED*
5 *CLAIMS.*—

6 (1) *IN GENERAL.*—*The Secretary of Health and*
7 *Human Services may not reopen a claim, adjust a*
8 *claim, or make a payment pursuant to any request*
9 *for payment under title XVIII of the Social Security*
10 *Act, submitted by an entity (including a hospital or*
11 *an entity wholly owned or operated by the hospital)*
12 *for services described in paragraph (2) for purposes of*
13 *treating, as unrelated to a patient’s inpatient admis-*
14 *sion, services provided during the 3 days (or, in the*
15 *case of a hospital that is not a subsection (d) hospital,*
16 *during the 1 day) immediately preceding the date of*
17 *the patient’s inpatient admission.*

18 (2) *SERVICES DESCRIBED.*—*For purposes of*
19 *paragraph (1), the services described in this para-*
20 *graph are other services related to the admission (as*
21 *described in section 1886(a)(4) of the Social Security*
22 *Act (42 U.S.C. 1395ww(a)(4)), as amended by sub-*
23 *section (a)) which were previously included on a*
24 *claim or request for payment submitted under part A*
25 *of title XVIII of such Act for which a reopening, ad-*

1 *justment, or request for payment under part B of*
2 *such title, was not submitted prior to the date of the*
3 *enactment of this Act.*

4 (d) *IMPLEMENTATION.*—*Notwithstanding any other*
5 *provision of law, the Secretary of Health and Human Serv-*
6 *ices may implement the provisions of this section (and*
7 *amendments made by this section) by program instruction*
8 *or otherwise.*

9 (e) *RULE OF CONSTRUCTION.*—*Nothing in the amend-*
10 *ments made by this section shall be construed as changing*
11 *the policy described in section 1886(a)(4) of the Social Se-*
12 *curity Act (42 U.S.C. 1395ww(a)(4)), as applied by the*
13 *Secretary of Health and Human Services before the date*
14 *of the enactment of this Act, with respect to diagnostic serv-*
15 *ices.*

16 **TITLE VI—OTHER PROVISIONS**

17 **SEC. 601. EXTENSION OF NATIONAL FLOOD INSURANCE** 18 **PROGRAM.**

19 (a) *EXTENSION.*—*Section 129 of the Continuing Ap-*
20 *propriations Resolution, 2010 (Public Law 111–68), as*
21 *amended by section 7(a) of Public Law 111–157, is amend-*
22 *ed by striking “by substituting” and all that follows through*
23 *the period at the end, and inserting “by substituting De-*
24 *cember 31, 2010, for the date specified in each such sec-*
25 *tion.”.*

1 (b) *EFFECTIVE DATE.*—*The amendments made by sub-*
2 *section (a) shall be considered to have taken effect on May*
3 *31, 2010.*

4 **SEC. 602. ALLOCATION OF GEOTHERMAL RECEIPTS.**

5 *Notwithstanding any other provision of law, for fiscal*
6 *year 2010 only, all funds received from sales, bonuses, roy-*
7 *alties, and rentals under the Geothermal Steam Act of 1970*
8 *(30 U.S.C. 1001 et seq.) shall be deposited in the Treasury,*
9 *of which—*

10 (1) *50 percent shall be used by the Secretary of*
11 *the Treasury to make payments to States within the*
12 *boundaries of which the leased land and geothermal*
13 *resources are located;*

14 (2) *25 percent shall be used by the Secretary of*
15 *the Treasury to make payments to the counties within*
16 *the boundaries of which the leased land or geothermal*
17 *resources are located; and*

18 (3) *25 percent shall be deposited in miscellaneous*
19 *receipts.*

20 **SEC. 603. SMALL BUSINESS LOAN GUARANTEE ENHANCE-**
21 **MENT EXTENSIONS.**

22 (a) *APPROPRIATION.*—*There is appropriated, out of*
23 *any funds in the Treasury not otherwise appropriated, for*
24 *an additional amount for “Small Business Administra-*
25 *tion—Business Loans Program Account”, \$505,000,000, to*

1 *remain available through December 31, 2010, for the cost*
2 *of—*

3 *(1) fee reductions and eliminations under section*
4 *501 of division A of the American Recovery and Re-*
5 *investment Act of 2009 (Public Law 111–5; 123 Stat.*
6 *151), as amended by this section; and*

7 *(2) loan guarantees under section 502 of division*
8 *A of the American Recovery and Reinvestment Act of*
9 *2009 (Public Law 111–5; 123 Stat. 152), as amended*
10 *by this section.*

11 *Such costs, including the cost of modifying such loans, shall*
12 *be as defined in section 502 of the Congressional Budget*
13 *Act of 1974.*

14 *(b) EXTENSION OF PROGRAMS.—*

15 *(1) FEES.—Section 501 of division A of the*
16 *American Recovery and Reinvestment Act of 2009*
17 *(Public Law 111–5; 123 Stat. 151) is amended by*
18 *striking “September 30, 2010” each place it appears*
19 *and inserting “December 31, 2010”.*

20 *(2) LOAN GUARANTEES.—Section 502(f) of divi-*
21 *sion A of the American Recovery and Reinvestment*
22 *Act of 2009 (Public Law 111–5; 123 Stat. 153) is*
23 *amended by striking “May 31, 2010” and inserting*
24 *“December 31, 2010”.*

1 (c) *APPROPRIATION.*—*There is appropriated for an*
2 *additional amount, out of any funds in the Treasury not*
3 *otherwise appropriated, for administrative expenses to*
4 *carry out sections 501 and 502 of division A of the Amer-*
5 *ican Recovery and Reinvestment Act of 2009 (Public Law*
6 *111–5), \$5,000,000, to remain available until expended,*
7 *which may be transferred and merged with the appropria-*
8 *tion for “Small Business Administration—Salaries and*
9 *Expenses”.*

10 **SEC. 604. EMERGENCY AGRICULTURAL DISASTER ASSIST-**
11 **ANCE.**

12 (a) *DEFINITIONS.*—*Except as otherwise provided in*
13 *this section, in this section:*

14 (1) *DISASTER COUNTY.*—

15 (A) *IN GENERAL.*—*The term “disaster coun-*
16 *ty” means a county included in the geographic*
17 *area covered by a qualifying natural disaster*
18 *declaration for the 2009 crop year.*

19 (B) *EXCLUSION.*—*The term “disaster coun-*
20 *ty” does not include a contiguous county.*

21 (2) *ELIGIBLE AQUACULTURE PRODUCER.*—*The*
22 *term “eligible aquaculture producer” means an aqua-*
23 *culture producer that during the 2009 calendar year,*
24 *as determined by the Secretary—*

1 (A) produced an aquaculture species for
2 which feed costs represented a substantial per-
3 centage of the input costs of the aquaculture op-
4 eration; and

5 (B) experienced a substantial price increase
6 of feed costs above the previous 5-year average.

7 (3) *ELIGIBLE PRODUCER*.—The term “eligible
8 producer” means an agricultural producer in a dis-
9 aster county.

10 (4) *ELIGIBLE SPECIALTY CROP PRODUCER*.—The
11 term “eligible specialty crop producer” means an ag-
12 ricultural producer that, for the 2009 crop year, as
13 determined by the Secretary—

14 (A) produced, or was prevented from plant-
15 ing, a specialty crop; and

16 (B) experienced specialty crop losses in a
17 disaster county due to drought, excessive rainfall,
18 or a related condition.

19 (5) *QUALIFYING NATURAL DISASTER DECLARA-*
20 *TION*.—The term “qualifying natural disaster dec-
21 laration” means a natural disaster declared by the
22 Secretary for production losses under section 321(a)
23 of the Consolidated Farm and Rural Development Act
24 (7 U.S.C. 1961(a)).

1 (6) *SECRETARY*.—The term “Secretary” means
2 the Secretary of Agriculture.

3 (7) *SPECIALTY CROP*.—The term “specialty
4 crop” has the meaning given the term in section 3 of
5 the Specialty Crops Competitiveness Act of 2004
6 (Public Law 108–465; 7 U.S.C. 1621 note).

7 (b) *SUPPLEMENTAL DIRECT PAYMENT*.—

8 (1) *IN GENERAL*.—Of the funds of the Com-
9 modity Credit Corporation, the Secretary shall use
10 such sums as are necessary to make supplemental
11 payments under sections 1103 and 1303 of the Food,
12 Conservation, and Energy Act of 2008 (7 U.S.C.
13 8713, 8753) to eligible producers on farms located in
14 disaster counties that had at least 1 crop of economic
15 significance (other than specialty crops or crops in-
16 tended for grazing) suffer at least a 5-percent crop
17 loss on a farm due to a natural disaster, including
18 quality losses, as determined by the Secretary, in an
19 amount equal to 90 percent of the direct payment the
20 eligible producers received for the 2009 crop year on
21 the farm.

22 (2) *ACRE PROGRAM*.—Eligible producers that
23 received direct payments under section 1105 of the
24 Food, Conservation, and Energy Act of 2008 (7
25 U.S.C. 8715) for the 2009 crop year and that other-

1 *wise meet the requirements of paragraph (1) shall be*
2 *eligible to receive supplemental payments under that*
3 *paragraph in an amount equal to 112.5 percent of the*
4 *reduced direct payment the eligible producers received*
5 *for the 2009 crop year under section 1103 or 1303 of*
6 *the Food, Conservation, and Energy Act of 2008 (7*
7 *U.S.C. 8713, 8753).*

8 *(3) RELATIONSHIP TO OTHER LAW.—Assistance*
9 *received under this subsection shall be included in the*
10 *calculation of farm revenue for the 2009 crop year*
11 *under section 531(b)(4)(A) of the Federal Crop Insur-*
12 *ance Act (7 U.S.C. 1531(b)(4)(A)) and section*
13 *901(b)(4)(A) of the Trade Act of 1974 (19 U.S.C.*
14 *2497(b)(4)(A)).*

15 *(c) SPECIALTY CROP ASSISTANCE.—*

16 *(1) IN GENERAL.—Of the funds of the Com-*
17 *modity Credit Corporation, the Secretary shall use*
18 *not more than \$300,000,000, to remain available*
19 *until September 30, 2011, to carry out a program of*
20 *grants to States to assist eligible specialty crop pro-*
21 *ducers for losses due to a natural disaster affecting*
22 *the 2009 crops, of which not more than—*

23 *(A) \$150,000,000 shall be used to assist eli-*
24 *gible specialty crop producers in counties that*

1 *have been declared a disaster as the result of*
2 *drought; and*

3 *(B) \$150,000,000 shall be used to assist eli-*
4 *gible specialty crop producers in counties that*
5 *have been declared a disaster as the result of ex-*
6 *cessive rainfall or a related condition.*

7 *(2) NOTIFICATION.—Not later than 45 days after*
8 *the date of enactment of this Act, the Secretary shall*
9 *notify the State department of agriculture (or similar*
10 *entity) in each State of the availability of funds to*
11 *assist eligible specialty crop producers, including such*
12 *terms as are determined by the Secretary to be nec-*
13 *essary for the equitable treatment of eligible specialty*
14 *crop producers.*

15 *(3) PROVISION OF GRANTS.—*

16 *(A) IN GENERAL.—The Secretary shall*
17 *make grants to States for disaster counties on a*
18 *pro rata basis based on the value of specialty*
19 *crop losses in those counties during the 2009 cal-*
20 *endar year, as determined by the Secretary.*

21 *(B) ADMINISTRATIVE COSTS.—State Sec-*
22 *retary of Agriculture may not use more than five*
23 *percent of the funds provided for costs associated*
24 *with the administration of the grants provided*
25 *in paragraph (1).*

1 (C) *ADMINISTRATION OF GRANTS.*—*State*
2 *Secretary of Agriculture may enter into a con-*
3 *tract with the Department of Agriculture to ad-*
4 *minister the grants provided in paragraph (1).*

5 (D) *TIMING.*—*Not later than 90 days after*
6 *the date of enactment of this Act, the Secretary*
7 *shall make grants to States to provide assistance*
8 *under this subsection.*

9 (E) *MAXIMUM GRANT.*—*The maximum*
10 *amount of a grant made to a State for counties*
11 *described in paragraph (1)(B) may not exceed*
12 *\$40,000,000.*

13 (4) *REQUIREMENTS.*—*The Secretary shall make*
14 *grants under this subsection only to States that dem-*
15 *onstrate to the satisfaction of the Secretary that the*
16 *State will—*

17 (A) *use grant funds to issue payments to el-*
18 *igible specialty crop producers;*

19 (B) *provide assistance to eligible specialty*
20 *crop producers not later than 60 days after the*
21 *date on which the State receives grant funds;*
22 *and*

23 (C) *not later than 30 days after the date on*
24 *which the State provides assistance to eligible*

1 specialty crop producers, submit to the Secretary
2 a report that describes—

3 (i) the manner in which the State pro-
4 vided assistance;

5 (ii) the amounts of assistance provided
6 by type of specialty crop; and

7 (iii) the process by which the State de-
8 termined the levels of assistance to eligible
9 specialty crop producers.

10 (D) *RELATION TO OTHER LAW.*—Assistance
11 received under this subsection shall be included
12 in the calculation of farm revenue for the 2009
13 crop year under section 531(b)(4)(A) of the Fed-
14 eral Crop Insurance Act (7 U.S.C.
15 1531(b)(4)(A)) and section 901(b)(4)(A) of the
16 Trade Act of 1974 (19 U.S.C. 2497(b)(4)(A)).

17 (d) *COTTONSEED ASSISTANCE.*—

18 (1) *IN GENERAL.*—Of the funds of the Com-
19 modity Credit Corporation, the Secretary shall use
20 not more than \$42,000,000 to provide supplemental
21 assistance to eligible producers and first-handlers of
22 the 2009 crop of cottonseed in a disaster county.

23 (2) *GENERAL TERMS.*—Except as otherwise pro-
24 vided in this subsection, the Secretary shall provide
25 disaster assistance under this subsection under the

1 same terms and conditions as assistance provided
2 under section 3015 of the *Emergency Agricultural*
3 *Disaster Assistance Act of 2006* (title III of Public
4 *Law 109–234; 120 Stat. 477*).

5 (3) *DISTRIBUTION OF ASSISTANCE*.—*The Sec-*
6 *retary shall distribute assistance to first handlers for*
7 *the benefit of eligible producers in a disaster county*
8 *in an amount equal to the product obtained by multi-*
9 *plying—*

10 (A) *the payment rate, as determined under*
11 *paragraph (4); and*

12 (B) *the county-eligible production, as deter-*
13 *mined under paragraph (5).*

14 (4) *PAYMENT RATE*.—*The payment rate shall be*
15 *equal to the quotient obtained by dividing—*

16 (A) *the total funds made available to carry*
17 *out this subsection; by*

18 (B) *the sum of the county-eligible produc-*
19 *tion, as determined under paragraph (5).*

20 (5) *COUNTY-ELIGIBLE PRODUCTION*.—*The coun-*
21 *ty-eligible production shall be equal to the product ob-*
22 *tained by multiplying—*

23 (A) *the number of acres planted to cotton in*
24 *the disaster county, as reported to the Secretary*
25 *by first handlers;*

1 (B) the expected cotton lint yield for the dis-
2 aster county, as determined by the Secretary
3 based on the best available information; and

4 (C) the national average seed-to-lint ratio,
5 as determined by the Secretary based on the best
6 available information for the 5 crop years imme-
7 diately preceding the 2009 crop, excluding the
8 year in which the average ratio was the highest
9 and the year in which the average ratio was the
10 lowest in such period.

11 (e) *AQUACULTURE ASSISTANCE.*—

12 (1) *IN GENERAL.*—Of the funds of the Com-
13 modity Credit Corporation, the Secretary shall use
14 not more than \$25,000,000, to remain available until
15 September 30, 2011, to carry out a program of grants
16 to States to assist eligible aquaculture producers for
17 losses associated with high feed input costs during the
18 2009 calendar year.

19 (2) *NOTIFICATION.*—Not later than 45 days after
20 the date of enactment of this Act, the Secretary shall
21 notify the State department of agriculture (or similar
22 entity) in each State of the availability of funds to
23 assist eligible aquaculture producers, including such
24 terms as are determined by the Secretary to be nec-

1 *essary for the equitable treatment of eligible aqua-*
2 *culture producers.*

3 (3) *PROVISION OF GRANTS.—*

4 (A) *IN GENERAL.—The Secretary shall*
5 *make grants to States under this subsection on*
6 *a pro rata basis based on the amount of aqua-*
7 *culture feed used in each State during the 2009*
8 *calendar year, as determined by the Secretary.*

9 (B) *TIMING.—Not later than 90 days after*
10 *the date of enactment of this Act, the Secretary*
11 *shall make grants to States to provide assistance*
12 *under this subsection.*

13 (4) *REQUIREMENTS.—The Secretary shall make*
14 *grants under this subsection only to States that dem-*
15 *onstrate to the satisfaction of the Secretary that the*
16 *State will—*

17 (A) *use grant funds to assist eligible aqua-*
18 *culture producers;*

19 (B) *provide assistance to eligible aqua-*
20 *culture producers not later than 60 days after*
21 *the date on which the State receives grant funds;*
22 *and*

23 (C) *not later than 30 days after the date on*
24 *which the State provides assistance to eligible*

1 *aquaculture producers, submit to the Secretary a*
2 *report that describes—*

3 *(i) the manner in which the State pro-*
4 *vided assistance;*

5 *(ii) the amounts of assistance provided*
6 *per species of aquaculture; and*

7 *(iii) the process by which the State de-*
8 *termined the levels of assistance to eligible*
9 *aquaculture producers.*

10 (5) *REDUCTION IN PAYMENTS.—An eligible*
11 *aquaculture producer that receives assistance under*
12 *this subsection shall not be eligible to receive any*
13 *other assistance under the supplemental agricultural*
14 *disaster assistance program established under section*
15 *531 of the Federal Crop Insurance Act (7 U.S.C.*
16 *1531) and section 901 of the Trade Act of 1974 (19*
17 *U.S.C. 2497) for any losses in 2009 relating to the*
18 *same species of aquaculture.*

19 (6) *REPORT TO CONGRESS.—Not later than 240*
20 *days after the date of enactment of this Act, the Sec-*
21 *retary shall submit to the appropriate committees of*
22 *Congress a report that—*

23 *(A) describes in detail the manner in which*
24 *this subsection has been carried out; and*

1 (B) includes the information reported to the
2 Secretary under paragraph (4)(C).

3 (f) *HAWAII TRANSPORTATION COOPERATIVE.*—Not-
4 withstanding any other provision of law, the Secretary shall
5 use \$21,000,000 of funds of the Commodity Credit Corpora-
6 tion to make a payment to an agricultural transportation
7 cooperative in the State of Hawaii, the members of which
8 are eligible to participate in the commodity loan program
9 of the Farm Service Agency, for assistance to maintain and
10 develop employment.

11 (g) *LIVESTOCK FORAGE DISASTER PROGRAM.*—

12 (1) *DEFINITION OF DISASTER COUNTY.*—In this
13 subsection:

14 (A) *IN GENERAL.*—The term “disaster coun-
15 ty” means a county included in the geographic
16 area covered by a qualifying natural disaster
17 declaration announced by the Secretary in cal-
18 endar year 2009.

19 (B) *INCLUSION.*—The term “disaster coun-
20 ty” includes a contiguous county.

21 (2) *PAYMENTS.*—Of the funds of the Commodity
22 Credit Corporation, the Secretary shall use not more
23 than \$50,000,000 to carry out a program to make
24 payments to eligible producers that had grazing losses
25 in disaster counties in calendar year 2009.

1 (3) *CRITERIA.*—

2 (A) *IN GENERAL.*—*Except as provided in*
3 *subparagraph (B), assistance under this sub-*
4 *section shall be determined under the same cri-*
5 *teria as are used to carry out the programs*
6 *under section 531(d) of the Federal Crop Insur-*
7 *ance Act (7 U.S.C. 1531(d)) and section 901(d)*
8 *of the Trade Act of 1974 (19 U.S.C. 2497(d)).*

9 (B) *DROUGHT INTENSITY.*—*For purposes of*
10 *this subsection, an eligible producer shall not be*
11 *required to meet the drought intensity require-*
12 *ments of section 531(d)(3)(D)(ii) of the Federal*
13 *Crop Insurance Act (7 U.S.C. 1531(d)(3)(D)(ii))*
14 *and section 901(d)(3)(D)(ii) of the Trade Act of*
15 *1974 (19 U.S.C. 2497(d)(3)(D)(ii)).*

16 (4) *AMOUNT.*—*Assistance under this subsection*
17 *shall be in an amount equal to 1 monthly payment*
18 *using the monthly payment rate under section*
19 *531(d)(3)(B) of the Federal Crop Insurance Act (7*
20 *U.S.C. 1531(d)(3)(B)) and section 901(d)(3)(B) of the*
21 *Trade Act of 1974 (19 U.S.C. 2497(d)(3)(B)).*

22 (5) *RELATION TO OTHER LAW.*—*An eligible pro-*
23 *ducer that receives assistance under this subsection*
24 *shall be ineligible to receive assistance for 2009 graz-*
25 *ing losses under the program carried out under sec-*

1 *tion 531(d) of the Federal Crop Insurance Act (7*
2 *U.S.C. 1531(d)) and section 901(d) of the Trade Act*
3 *of 1974 (19 U.S.C. 2497(d)).*

4 *(h) EMERGENCY LOANS FOR POULTRY PRODUCERS.—*

5 *(1) DEFINITIONS.—In this subsection:*

6 *(A) ANNOUNCEMENT DATE.—The term “an-*
7 *nouncement date” means the date on which the*
8 *Secretary announces the emergency loan pro-*
9 *gram under this subsection.*

10 *(B) POULTRY INTEGRATOR.—The term*
11 *“poultry integrator” means a poultry integrator*
12 *that filed proceedings under chapter 11 of title*
13 *11, United States Code, in United States Bank-*
14 *ruptcy Court during the 30-day period begin-*
15 *ning on December 1, 2008.*

16 *(2) LOAN PROGRAM.—*

17 *(A) IN GENERAL.—Of the funds of the Com-*
18 *modity Credit Corporation, the Secretary shall*
19 *use not more than \$75,000,000, to remain avail-*
20 *able until expended, for the cost of making no-*
21 *interest emergency loans available to poultry*
22 *producers that meet the requirements of this sub-*
23 *section.*

24 *(B) TERMS AND CONDITIONS.—Except as*
25 *otherwise provided in this subsection, emergency*

1 *loans under this subsection shall be subject to*
2 *such terms and conditions as are determined by*
3 *the Secretary.*

4 (3) *LOANS.—*

5 (A) *IN GENERAL.—An emergency loan made*
6 *to a poultry producer under this subsection shall*
7 *be for the purpose of providing financing to the*
8 *poultry producer in response to financial losses*
9 *associated with the termination or nonrenewal of*
10 *any contract between the poultry producer and a*
11 *poultry integrator.*

12 (B) *ELIGIBILITY.—*

13 (i) *IN GENERAL.—To be eligible for an*
14 *emergency loan under this subsection, not*
15 *later than 90 days after the announcement*
16 *date, a poultry producer shall submit to the*
17 *Secretary evidence that—*

18 (I) *the contract of the poultry pro-*
19 *ducer described in subparagraph (A)*
20 *was not continued; and*

21 (II) *no similar contract has been*
22 *awarded subsequently to the poultry*
23 *producer.*

24 (ii) *REQUIREMENT TO OFFER*
25 *LOANS.—Notwithstanding any other provi-*

1 *sion of law, if a poultry producer meets the*
2 *eligibility requirements described in clause*
3 *(i), subject to the availability of funds*
4 *under paragraph (2)(A), the Secretary shall*
5 *offer to make a loan under this subsection*
6 *to the poultry producer with a minimum*
7 *term of 2 years.*

8 (4) *ADDITIONAL REQUIREMENTS.—*

9 (A) *IN GENERAL.—A poultry producer that*
10 *receives an emergency loan under this subsection*
11 *may use the emergency loan proceeds only to*
12 *repay the amount that the poultry producer owes*
13 *to any lender for the purchase, improvement, or*
14 *operation of the poultry farm.*

15 (B) *CONVERSION OF THE LOAN.—A poultry*
16 *producer that receives an emergency loan under*
17 *this subsection shall be eligible to have the bal-*
18 *ance of the emergency loan converted, but not re-*
19 *financed, to a loan that has the same terms and*
20 *conditions as an operating loan under subtitle B*
21 *of the Consolidated Farm and Rural Develop-*
22 *ment Act (7 U.S.C. 1941 et seq.).*

23 (i) *STATE AND LOCAL GOVERNMENTS.—Section*
24 *1001(f)(6)(A) of the Food Security Act of 1985 (7 U.S.C.*
25 *1308(f)(6)(A)) is amended by inserting “(other than the*

1 *conservation reserve program established under subchapter*
2 *B of chapter 1 of subtitle D of title XII of this Act)” before*
3 *the period at the end.*

4 (j) *ADMINISTRATION.—*

5 (1) *REGULATIONS.—*

6 (A) *IN GENERAL.—As soon as practicable*
7 *after the date of enactment of this Act, the Sec-*
8 *retary shall promulgate such regulations as are*
9 *necessary to implement this section and the*
10 *amendment made by this section.*

11 (B) *PROCEDURE.—The promulgation of the*
12 *regulations and administration of this section*
13 *and the amendment made by this section shall be*
14 *made without regard to—*

15 (i) *the notice and comment provisions*
16 *of section 553 of title 5, United States Code;*

17 (ii) *the Statement of Policy of the Sec-*
18 *retary of Agriculture effective July 24, 1971*
19 *(36 Fed. Reg. 13804), relating to notices of*
20 *proposed rulemaking and public participa-*
21 *tion in rulemaking; and*

22 (iii) *chapter 35 of title 44, United*
23 *States Code (commonly known as the “Pa-*
24 *perwork Reduction Act”).*

1 (C) CONGRESSIONAL REVIEW OF AGENCY
2 RULEMAKING.—In carrying out this paragraph,
3 the Secretary shall use the authority provided
4 under section 808 of title 5, United States Code.

5 (2) ADMINISTRATIVE COSTS.—Of the funds of the
6 Commodity Credit Corporation, the Secretary may
7 use up to \$10,000,000 to pay administrative costs in-
8 curred by the Secretary that are directly related to
9 carrying out this Act.

10 (3) PROHIBITION.—None of the funds of the Ag-
11 ricultural Disaster Relief Trust Fund established
12 under section 902 of the Trade Act of 1974 (19 U.S.C.
13 2497a) may be used to carry out this Act.

14 **SEC. 605. SUMMER EMPLOYMENT FOR YOUTH.**

15 There is appropriated, out of any funds in the Treas-
16 ury not otherwise appropriated, for an additional amount
17 for “Department of Labor—Employment and Training Ad-
18 ministration—Training and Employment Services” for ac-
19 tivities under the Workforce Investment Act of 1998
20 (“WIA”), \$1,000,000,000 shall be available for obligation
21 on the date of enactment of this Act for grants to States
22 for youth activities, including summer employment for
23 youth: Provided, That no portion of such funds shall be re-
24 served to carry out section 127(b)(1)(A) of the WIA: Pro-
25 vided further, That for purposes of section 127(b)(1)(C)(iv)

1 of the WIA, funds available for youth activities shall be al-
2 lotted as if the total amount available for youth activities
3 in the fiscal year does not exceed \$1,000,000,000: Provided
4 further, That with respect to the youth activities provided
5 with such funds, section 101(13)(A) of the WIA shall be ap-
6 plied by substituting “age 24” for “age 21”: Provided fur-
7 ther, That the work readiness performance indicator de-
8 scribed in section 136(b)(2)(A)(ii)(I) of the WIA shall be
9 the only measure of performance used to assess the effective-
10 ness of summer employment for youth provided with such
11 funds: Provided further, That an amount that is not more
12 than 1 percent of such amount may be used for the adminis-
13 tration, management, and oversight of the programs, activi-
14 ties, and grants carried out with such funds, including the
15 evaluation of the use of such funds: Provided further, That
16 funds available under the preceding proviso, together with
17 funds described in section 801(a) of division A of the Amer-
18 ican Recovery and reinvestment Act of 2009 (Public Law
19 111–5), and funds provided in such Act under the heading
20 “Department of Labor–Departmental Management–Sala-
21 ries and Expenses”, shall remain available for obligation
22 through September 30, 2011.

23 **SEC. 606. HOUSING TRUST FUND.**

24 (a) *FUNDING.*—There is hereby appropriated for the
25 Housing Trust Fund established pursuant to section 1338

1 *of the Federal Housing Enterprises Financial Safety and*
2 *Soundness Act of 1992 (12 U.S.C. 4568), \$1,065,000,000,*
3 *for use under such section: Provided, That of the total*
4 *amount provided under this heading, \$65,000,000 shall be*
5 *available to the Secretary of Housing and Urban Develop-*
6 *ment only for incremental project-based voucher assistance*
7 *to be allocated to States to be used solely in conjunction*
8 *with grant funds awarded under such section 1338, pursu-*
9 *ant to the formula established under section 1338 and tak-*
10 *ing into account different per unit subsidy needs among*
11 *states, as determined by the Secretary.*

12 (b) *AMENDMENTS.—Section 1338 of the Federal Hous-*
13 *ing Enterprises Financial Safety and Soundness Act of*
14 *1992 (12 U.S.C. 4568) is amended—*

15 (1) *in subsection (c)—*

16 (A) *in paragraph (4)(A) by inserting after*
17 *the period at the end the following: “Notwith-*
18 *standing any other provision of law, for the fis-*
19 *cal year following enactment of this sentence and*
20 *thereafter, the Secretary may make such notice*
21 *available only on the Internet at the appropriate*
22 *government website or websites or through other*
23 *electronic media, as determined by the Sec-*
24 *retary.”;*

1 (B) in paragraph (5)(C), by striking “(8)”
2 and inserting “(9)”; and

3 (C) in paragraph (7)(A)—

4 (i) by striking “section 1335(a)(2)(B)”
5 and inserting “section 1335(a)(1)(B)”; and

6 (ii) by inserting “the units funded
7 under” after “75 percent of”; and

8 (2) by adding at the end the following new sub-
9 section:

10 “(k) *ENVIRONMENTAL REVIEW*.—For the purpose of
11 environmental compliance review, funds awarded under
12 this section shall be subject to section 288 of the *HOME*
13 *Investment Partnerships Act* (12 U.S.C. 12838) and shall
14 be treated as funds under the program established by such
15 Act.”.

16 **SEC. 607. THE INDIVIDUAL INDIAN MONEY ACCOUNT LITI-**
17 **GATION SETTLEMENT ACT OF 2010.**

18 (a) *SHORT TITLE*.—This section may be cited as the
19 “*Individual Indian Money Account Litigation Settlement*
20 *Act of 2010*”.

21 (b) *DEFINITIONS*.—In this section:

22 (1) *AMENDED COMPLAINT*.—The term “*Amended*
23 *Complaint*” means the *Amended Complaint* attached
24 to the *Settlement*.

1 (2) *LAND CONSOLIDATION PROGRAM.*—*The term*
2 *“Land Consolidation Program” means a program*
3 *conducted in accordance with the Settlement and the*
4 *Indian Land Consolidation Act (25 U.S.C. 2201 et*
5 *seq.) under which the Secretary may purchase frac-*
6 *tional interests in trust or restricted land.*

7 (3) *LITIGATION.*—*The term “Litigation” means*
8 *the case entitled Elouise Cobell et al. v. Ken Salazar*
9 *et al., United States District Court, District of Co-*
10 *lumbia, Civil Action No. 96–1285 (JR).*

11 (4) *PLAINTIFF.*—*The term “Plaintiff” means a*
12 *member of any class certified in the Litigation.*

13 (5) *SECRETARY.*—*The term “Secretary” means*
14 *the Secretary of the Interior.*

15 (6) *SETTLEMENT.*—*The term “Settlement”*
16 *means the Class Action Settlement Agreement dated*
17 *December 7, 2009, in the Litigation, as modified by*
18 *the parties to the Litigation.*

19 (7) *TRUST ADMINISTRATION CLASS.*—*The term*
20 *“Trust Administration Class” means the Trust Ad-*
21 *ministration Class as defined in the Settlement.*

22 (c) *PURPOSE.*—*The purpose of this section is to au-*
23 *thorize the Settlement.*

24 (d) *AUTHORIZATION.*—*The Settlement is authorized,*
25 *ratified, and confirmed.*

1 (e) *JURISDICTIONAL PROVISIONS.*—

2 (1) *IN GENERAL.*—*Notwithstanding the limita-*
3 *tion of jurisdiction of district courts contained in sec-*
4 *tion 1346(a)(2) of title 28, United States Code, the*
5 *United States District Court for the District of Co-*
6 *lumbia shall have jurisdiction over the claims asserted*
7 *in the Amended Complaint for purposes of the Settle-*
8 *ment.*

9 (2) *CERTIFICATION OF TRUST ADMINISTRATION*
10 *CLASS.*—

11 (A) *IN GENERAL.*—*Notwithstanding the re-*
12 *quirements of the Federal Rules of Civil Proce-*
13 *dure, the court overseeing the Litigation may*
14 *certify the Trust Administration Class.*

15 (B) *TREATMENT.*—*On certification under*
16 *subparagraph (A), the Trust Administration*
17 *Class shall be treated as a class under Federal*
18 *Rule of Civil Procedure 23(b)(3) for purposes of*
19 *the Settlement.*

20 (f) *TRUST LAND CONSOLIDATION.*—

21 (1) *TRUST LAND CONSOLIDATION FUND.*—

22 (A) *ESTABLISHMENT.*—*On final approval*
23 *(as defined in the Settlement) of the Settlement,*
24 *there shall be established in the Treasury of the*

1 *United States a fund, to be known as the “Trust*
2 *Land Consolidation Fund”.*

3 *(B) AVAILABILITY OF AMOUNTS.—Amounts*
4 *in the Trust Land Consolidation Fund shall be*
5 *made available to the Secretary during the 10-*
6 *year period beginning on the date of final ap-*
7 *proval of the Settlement—*

8 *(i) to conduct the Land Consolidation*
9 *Program; and*

10 *(ii) for other costs specified in the Set-*
11 *tlement.*

12 *(C) DEPOSITS.—*

13 *(i) IN GENERAL.—On final approval*
14 *(as defined in the Settlement) of the Settle-*
15 *ment, the Secretary of the Treasury shall*
16 *deposit in the Trust Land Consolidation*
17 *Fund \$2,000,000,000 of the amounts appro-*
18 *priated by section 1304 of title 31, United*
19 *States Code.*

20 *(ii) CONDITIONS MET.—The conditions*
21 *described in section 1304 of title 31, United*
22 *States Code, shall be considered to be met*
23 *for purposes of clause (i).*

24 *(D) TRANSFERS.—In a manner designed to*
25 *encourage participation in the Land Consolida-*

1 *tion Program, the Secretary may transfer, at the*
2 *discretion of the Secretary, not more than*
3 *\$60,000,000 of amounts in the Trust Land Con-*
4 *solidation Fund to the Indian Education Schol-*
5 *arship Holding Fund established under para-*
6 *graph 2.*

7 (2) *INDIAN EDUCATION SCHOLARSHIP HOLDING*
8 *FUND.—*

9 (A) *ESTABLISHMENT.—On the final ap-*
10 *proval (as defined in the Settlement) of the Set-*
11 *tlement, there shall be established in the Treas-*
12 *ury of the United States a fund, to be known as*
13 *the “Indian Education Scholarship Holding*
14 *Fund”.*

15 (B) *AVAILABILITY.—Notwithstanding any*
16 *other provision of law governing competition,*
17 *public notification, or Federal procurement or*
18 *assistance, amounts in the Indian Education*
19 *Scholarship Holding Fund shall be made avail-*
20 *able, without further appropriation, to the Sec-*
21 *retary to contribute to an Indian Education*
22 *Scholarship Fund, as described in the Settle-*
23 *ment, to provide scholarships for Native Ameri-*
24 *cans.*

1 (3) *ACQUISITION OF TRUST OR RESTRICTED*
2 *LAND.—The Secretary may acquire, at the discretion*
3 *of the Secretary and in accordance with the Land*
4 *Consolidation Program, any fractional interest in*
5 *trust or restricted land.*

6 (4) *TREATMENT OF UNLOCATABLE PLAIN-*
7 *TIFFS.—A Plaintiff the whereabouts of whom are un-*
8 *known and who, after reasonable efforts by the Sec-*
9 *retary, cannot be located during the 5 year period be-*
10 *ginning on the date of final approval (as defined in*
11 *the Settlement) of the Settlement shall be considered*
12 *to have accepted an offer made pursuant to the Land*
13 *Consolidation Program.*

14 (g) *TAXATION AND OTHER BENEFITS.—*

15 (1) *INTERNAL REVENUE CODE.—For purposes of*
16 *the Internal Revenue Code of 1986, amounts received*
17 *by an individual Indian as a lump sum or a periodic*
18 *payment pursuant to the Settlement—*

19 (A) *shall not be included in gross income;*

20 *and*

21 (B) *shall not be taken into consideration for*
22 *purposes of applying any provision of the Inter-*
23 *nal Revenue Code of 1986 that takes into ac-*
24 *count excludible income in computing adjusted*
25 *gross income or modified adjusted gross income,*

1 including section 86 of that Code (relating to So-
2 cial Security and tier 1 railroad retirement ben-
3 efits).

4 (2) *OTHER BENEFITS.*—Notwithstanding any
5 other provision of law, for purposes of determining
6 initial eligibility, ongoing eligibility, or level of bene-
7 fits under any Federal or federally assisted program,
8 amounts received by an individual Indian as a lump
9 sum or a periodic payment pursuant to the Settle-
10 ment shall not be treated for any household member,
11 during the 1-year period beginning on the date of re-
12 ceipt—

13 (A) as income for the month during which
14 the amounts were received; or

15 (B) as a resource.

16 **SEC. 608. APPROPRIATION OF FUNDS FOR FINAL SETTLE-**
17 **MENT OF CLAIMS FROM IN RE BLACK FARM-**
18 **ERS DISCRIMINATION LITIGATION.**

19 (a) *DEFINITIONS.*—In this section:

20 (1) *SETTLEMENT AGREEMENT.*—The term “Set-
21 tlement Agreement” means the settlement agreement
22 dated February 18, 2010 (including any modifica-
23 tions agreed to by the parties and approved by the
24 court under that agreement) between certain plain-
25 tiffs, by and through their counsel, and the Secretary

1 of Agriculture to resolve, fully and forever, the claims
2 raised or that could have been raised in the cases con-
3 solidated in *In re Black Farmers Discrimination*
4 *Litigation*, No. 08–511 (D.D.C.), including Pigford
5 claims asserted under section 14012 of the Food, Con-
6 servation, and Energy Act of 2008 (Public Law 110–
7 246; 122 Stat. 2209).

8 (2) *PIGFORD CLAIM*.—The term “Pigford claim”
9 has the meaning given that term in section
10 14012(a)(3) of the Food, Conservation, and Energy
11 Act of 2008 (Public Law 110–246; 122 Stat. 2210).

12 (b) *APPROPRIATION OF FUNDS*.—There is hereby ap-
13 propriated to the Secretary of Agriculture \$1,150,000,000,
14 to remain available until expended, to carry out the terms
15 of the Settlement Agreement if the Settlement Agreement is
16 approved by a court order that is or becomes final and non-
17 appealable. The funds appropriated by this subsection are
18 in addition to the \$100,000,000 of funds of the Commodity
19 Credit Corporation made available by section 14012(i) of
20 the Food, Conservation, and Energy Act of 2008 (Public
21 Law 110–246; 122 Stat. 2212) and shall be available for
22 obligation only after those Commodity Credit Corporation
23 funds are fully obligated. If the Settlement Agreement is not
24 approved as provided in this subsection, the \$100,000,000
25 of funds of the Commodity Credit Corporation made avail-

1 able by section 14012(i) of the Food, Conservation, and En-
2 ergy Act of 2008 shall be the sole funding available for
3 Pigford claims.

4 (c) *USE OF FUNDS.*—The use of the funds appro-
5 priated by subsection (b) shall be subject to the express terms
6 of the Settlement Agreement.

7 (d) *TREATMENT OF REMAINING FUNDS.*—If any of the
8 funds appropriated by subsection (b) are not obligated and
9 expended to carry out the Settlement Agreement, the Sec-
10 retary of Agriculture shall return the unused funds to the
11 Treasury and may not make the unused funds available for
12 any purpose related to section 14012 of the Food, Conserva-
13 tion, and Energy Act of 2008, for any other settlement
14 agreement executed in *In re Black Farmers Discrimination*
15 *Litigation*, No. 08–511 (D.D.C.), or for any other purpose.

16 (e) *RULES OF CONSTRUCTION.*—Nothing in this sec-
17 tion shall be construed as requiring the United States, any
18 of its officers or agencies, or any other party to enter into
19 the Settlement Agreement or any other settlement agree-
20 ment. Nothing in this section shall be construed as creating
21 the basis for a Pigford claim.

22 (f) *CONFORMING AMENDMENTS.*—Section 14012 of the
23 Food, Conservation, and Energy Act of 2008 (Public Law
24 110–246; 122 Stat. 2209) is amended—

25 (1) in subsection (c)(1)—

1 (A) by striking “subsection (h)” and insert-
2 ing “subsection (g)”; and

3 (B) by striking “subsection (i)” and insert-
4 ing “subsection (h)”;

5 (2) by striking subsection (e);

6 (3) in subsection (g), by striking “subsection (f)”
7 and inserting “subsection (e)”;

8 (4) in subsection (i)—

9 (A) by striking “(1) IN GENERAL.—Of the
10 funds” and inserting “Of the funds”; and

11 (B) by striking paragraph (2);

12 (5) by striking subsection (j); and

13 (6) by redesignating subsections (f), (g), (h), (i),
14 and (k) as subsections (e), (f), (g), (h), and (i), respec-
15 tively.

16 **SEC. 609. EXPANSION OF ELIGIBILITY FOR CONCURRENT**
17 **RECEIPT OF MILITARY RETIRED PAY AND**
18 **VETERANS’ DISABILITY COMPENSATION TO**
19 **INCLUDE ALL CHAPTER 61 DISABILITY RETIR-**
20 **EES REGARDLESS OF DISABILITY RATING**
21 **PERCENTAGE OR YEARS OF SERVICE.**

22 (a) *PHASED EXPANSION CONCURRENT RECEIPT.*—
23 Subsection (a) of section 1414 of title 10, United States
24 Code, is amended to read as follows:

1 “(a) *PAYMENT OF BOTH RETIRED PAY AND DIS-*
2 *ABILITY COMPENSATION.*—

3 “(1) *PAYMENT OF BOTH REQUIRED.*—

4 “(A) *IN GENERAL.*—Subject to subsection
5 *(b)*, a member or former member of the uni-
6 *formed services* who is entitled for any month to
7 *retired pay* and who is also entitled for that
8 *month to veterans’ disability compensation* for a
9 *qualifying service-connected disability* (in this
10 *section referred to as a ‘qualified retiree’*) is enti-
11 *tled to be paid both for that month without re-*
12 *gard to sections 5304 and 5305 of title 38.*

13 “(B) *APPLICABILITY OF FULL CONCURRENT*
14 *RECEIPT PHASE-IN REQUIREMENT.*—During the
15 *period beginning on January 1, 2004, and end-*
16 *ing on December 31, 2013, payment of retired*
17 *pay to a qualified retiree is subject to subsection*
18 *(c).*

19 “(C) *PHASE-IN EXCEPTION FOR 100 PER-*
20 *CENT DISABLED RETIREES.*—The payment of re-
21 *tired pay is subject to subsection (c) only during*
22 *the period beginning on January 1, 2004, and*
23 *ending on December 31, 2004, in the case of the*
24 *following qualified retirees:*

1 “(i) A qualified retiree receiving vet-
2 erans’ disability compensation for a dis-
3 ability rated as 100 percent.

4 “(ii) A qualified retiree receiving vet-
5 erans’ disability compensation at the rate
6 payable for a 100 percent disability by rea-
7 son of a determination of individual
8 unemployability.

9 “(D) TEMPORARY PHASE-IN EXCEPTION FOR
10 CERTAIN CHAPTER 61 DISABILITY RETIREES;
11 TERMINATION.—Subject to subsection (b), during
12 the period beginning on January 1, 2011, and
13 ending on September 30, 2012, subsection (c)
14 shall not apply to a qualified retiree described in
15 subparagraph (B) or (C) of paragraph (2).

16 “(2) QUALIFYING SERVICE-CONNECTED DIS-
17 ABILITY DEFINED.—In this section:

18 “(A) 50 PERCENT RATING THRESHOLD.—In
19 the case of a member or former member receiving
20 retired pay under any provision of law other
21 than chapter 61 of this title, or under chapter 61
22 with 20 years or more of service otherwise cred-
23 itable under section 1405 or computed under sec-
24 tion 12732 of this title, the term ‘qualifying serv-
25 ice-connected disability’ means a service-con-

1 *ected disability or combination of service-con-*
2 *ected disabilities that is rated as not less than*
3 *50 percent disabling by the Secretary of Veterans*
4 *Affairs. However, during the period specified in*
5 *paragraph (1)(D), members or former members*
6 *receiving retired pay under chapter 61 with 20*
7 *years or more of creditable service computed*
8 *under section 12732 of this title, but not other-*
9 *wise entitled to retired pay under any other pro-*
10 *vision of this title, shall qualify in accordance*
11 *with subparagraphs (B) and (C).*

12 *“(B) INCLUSION OF MEMBERS NOT OTHER-*
13 *WISE ENTITLED TO RETIRED PAY.—In the case of*
14 *a member or former member receiving retired*
15 *pay under chapter 61 of this title, but who is not*
16 *otherwise entitled to retired pay under any other*
17 *provision of this title, the term ‘qualifying serv-*
18 *ice-connected disability’ means a service-con-*
19 *ected disability or combination of service-con-*
20 *ected disabilities that is rated by the Secretary*
21 *of Veterans Affairs at the disabling level specified*
22 *in one of the following clauses (which, subject to*
23 *paragraph (3), is effective on or after the date*
24 *specified in the applicable clause):*

1 “(i) *January 1, 2011, rated 100 per-*
2 *cent, or a rate payable at 100 percent by*
3 *reason of individual unemployability or*
4 *rated 90 percent.*

5 “(ii) *January 1, 2012, rated 80 per-*
6 *cent or 70 percent.*

7 “(iii) *January 1, 2013, rated 60 per-*
8 *cent or 50 percent.*

9 “(C) *ELIMINATION OF RATING THRESH-*
10 *OLD.—In the case of a member or former mem-*
11 *ber receiving retired pay under chapter 61 re-*
12 *gardless of being otherwise eligible for retirement,*
13 *the term ‘qualifying service-connected disability’*
14 *means a service-connected disability or combina-*
15 *tion of service-connected disabilities that is rated*
16 *by the Secretary of Veterans Affairs at the dis-*
17 *abling level specified in one of the following*
18 *clauses (which, subject to paragraph (3), is effec-*
19 *tive on or after the date specified in the applica-*
20 *ble clause):*

21 “(i) *January 1, 2014, rated 40 percent*
22 *or 30 percent.*

23 “(ii) *January 1, 2015, any rating.*

1 “(3) *LIMITED DURATION.*—Notwithstanding the
2 *effective date specified in each clause of subpara-*
3 *graphs (B) and (C) of paragraph (2), the clause—*

4 “(A) *shall apply only if the termination*
5 *date specified in paragraph (1)(D) would occur*
6 *during or after the calendar year specified in the*
7 *clause; and*

8 “(B) *shall not apply beyond the termi-*
9 *nation date specified in paragraph (1)(D).”.*

10 (b) *CONFORMING AMENDMENT TO SPECIAL RULES FOR*
11 *CHAPTER 61 DISABILITY RETIREES.*—Subsection (b) of
12 *such section is amended to read as follows:*

13 “(b) *SPECIAL RULES FOR CHAPTER 61 DISABILITY*
14 *RETIREES WHEN ELIGIBILITY HAS BEEN ESTABLISHED*
15 *FOR SUCH RETIREES.—*

16 “(1) *GENERAL REDUCTION RULE.*—The retired
17 *pay of a member retired under chapter 61 of this title*
18 *is subject to reduction under sections 5304 and 5305*
19 *of title 38, but only to the extent that the amount of*
20 *the members retired pay under chapter 61 of this title*
21 *exceeds the amount of retired pay to which the mem-*
22 *ber would have been entitled under any other provi-*
23 *sion of law based upon the member’s service in the*
24 *uniformed services if the member had not been retired*
25 *under chapter 61 of this title.*

1 “(2) *CHAPTER 61 RETIREES NOT OTHERWISE EN-*
2 *TITLED TO RETIRED PAY.—*

3 “(A) *BEFORE TERMINATION DATE.—If a*
4 *member with a qualifying service-connected dis-*
5 *ability (as defined in subsection (a)(2)) is retired*
6 *under chapter 61 of this title, but is not other-*
7 *wise entitled to retired pay under any other pro-*
8 *vision of this title, and the termination date*
9 *specified in subsection (a)(1)(D) has not oc-*
10 *curred, the retired pay of the member is subject*
11 *to reduction under sections 5304 and 5305 of*
12 *title 38, but only to the extent that the amount*
13 *of the member’s retired pay under chapter 61 of*
14 *this title exceeds the amount equal to 2½ percent*
15 *of the member’s years of creditable service multi-*
16 *plied by the member’s retired pay base under sec-*
17 *tion 1406(b)(1) or 1407 of this title, whichever is*
18 *applicable to the member.*

19 “(B) *AFTER TERMINATION DATE.—Sub-*
20 *section (a) does not apply to a member described*
21 *in subparagraph (A) if the termination date*
22 *specified in subsection (a)(1)(D) has occurred.”.*

23 “(c) *CONFORMING AMENDMENT TO FULL CONCURRENT*
24 *RECEIPT PHASE-IN.—Subsection (c) of such section is*
25 *amended by striking “the second sentence of”.*

1 (d) *CLERICAL AMENDMENTS.*—

2 (1) *SECTION HEADING.*—*The heading of such sec-*
3 *tion is amended to read as follows:*

4 **“§1414. Concurrent receipt of retired pay and vet-**
5 **erans’ disability compensation”.**

6 (2) *TABLE OF SECTIONS.*—*The table of sections*
7 *at the beginning of chapter 71 of such title is amend-*
8 *ed by striking the item related to section 1414 and in-*
9 *serting the following new item:*

“1414. Concurrent receipt of retired pay and veterans’ disability compensation.”.

10 (e) *EFFECTIVE DATE.*—*The amendments made by this*
11 *section shall take effect on January 1, 2011.*

12 **SEC. 610. EXTENSION OF USE OF 2009 POVERTY GUIDE-**
13 **LINES.**

14 *Section 1012 of the Department of Defense Appropria-*
15 *tions Act, 2010 (Public Law 111–118), as amended by sec-*
16 *tion 6 of the Continuing Extension Act of 2010 (Public Law*
17 *111–157), is amended—*

18 (1) *by striking “before May 31, 2010”; and*

19 (2) *by inserting “for 2011” after “until updated*
20 *poverty guidelines”.*

1 **SEC. 611. REFUNDS DISREGARDED IN THE ADMINISTRA-**
2 **TION OF FEDERAL PROGRAMS AND FEDER-**
3 **ALLY ASSISTED PROGRAMS.**

4 (a) *IN GENERAL.*—Subchapter A of chapter 65 of the
5 Internal Revenue Code of 1986 is amended by adding at
6 the end the following new section:

7 **“SEC. 6409. REFUNDS DISREGARDED IN THE ADMINISTRA-**
8 **TION OF FEDERAL PROGRAMS AND FEDER-**
9 **ALLY ASSISTED PROGRAMS.**

10 “(a) *IN GENERAL.*—Notwithstanding any other provi-
11 sion of law, any refund (or advance payment with respect
12 to a refundable credit) made to any individual under this
13 title shall not be taken into account as income, and shall
14 not be taken into account as resources for a period of 12
15 months from receipt, for purposes of determining the eligi-
16 bility of such individual (or any other individual) for bene-
17 fits or assistance (or the amount or extent of benefits or
18 assistance) under any Federal program or under any State
19 or local program financed in whole or in part with Federal
20 funds.

21 “(b) *TERMINATION.*—Subsection (a) shall not apply to
22 any amount received after December 31, 2010.”.

23 (b) *CLERICAL AMENDMENT.*—The table of sections for
24 such subchapter is amended by adding at the end the fol-
25 lowing new item:

“Sec. 6409. Refunds disregarded in the administration of Federal programs and federally assisted programs.”.

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to amounts received after December 31,*
 3 *2009.*

4 **SEC. 612. STATE COURT IMPROVEMENT PROGRAM.**

5 *Section 438 of the Social Security Act (42 U.S.C.*
 6 *629h) is amended—*

7 (1) *in subsection (c)(2)(A), by striking “2010”*
 8 *and inserting “2011”; and*

9 (2) *in subsection (e), by striking “2010” and in-*
 10 *serting “2011”.*

11 **SEC. 613. QUALIFYING TIMBER CONTRACT OPTIONS.**

12 (a) *DEFINITIONS.*—*In this section:*

13 (1) *QUALIFYING CONTRACT.*—*The term “quali-*
 14 *fying contract” means a contract that has not been*
 15 *terminated by the Bureau of Land Management for*
 16 *the sale of timber on lands administered by the Bu-*
 17 *reau of Land Management that meets all of the fol-*
 18 *lowing criteria:*

19 (A) *The contract was awarded during the*
 20 *period beginning on January 1, 2005, and end-*
 21 *ing on December 31, 2008.*

22 (B) *There is unharvested volume remaining*
 23 *for the contract.*

24 (C) *The contract is not a salvage sale.*

1 (D) *The Secretary determined there is not*
2 *an urgent need to harvest under the contract due*
3 *to deteriorating timber conditions that developed*
4 *after the award of the contract.*

5 (2) *SECRETARY.—The term “Secretary” means*
6 *the Secretary of the Interior, acting through the Di-*
7 *rector of Bureau of Land Management.*

8 (3) *TIMBER PURCHASER.—The term “timber*
9 *purchaser” means the party to the qualifying contract*
10 *for the sale of timber from lands administered by the*
11 *Bureau of Land Management.*

12 (b) *MARKET-RELATED CONTRACT EXTENSION OP-*
13 *TION.—Upon a timber purchaser’s written request, the Sec-*
14 *retary may make a one-time modification to the qualifying*
15 *contract to add 3 years to the contract expiration date if*
16 *the written request—*

17 (1) *is received by the Secretary not later than 90*
18 *days after the date of enactment of this Act; and*

19 (2) *contains a provision releasing the United*
20 *States from all liability, including further consider-*
21 *ation or compensation, resulting from the modifica-*
22 *tion under this subsection of the term of a qualifying*
23 *contract.*

24 (c) *REPORTING.—Not later than 6 months after the*
25 *date of the enactment of this Act, the Secretary shall submit*

1 to Congress a report detailing a plan and timeline to pro-
2 mulgate new regulations authorizing the Bureau of Land
3 Management to extend timber contracts due to changes in
4 market conditions.

5 (d) *REGULATIONS.*—Not later than 2 years after the
6 date of the enactment of this Act, the Secretary shall pro-
7 mulgate new regulations authorizing the Bureau of Land
8 Management to extend timber contracts due to changes in
9 market conditions.

10 (e) *NO SURRENDER OF CLAIMS.*—This section shall
11 not have the effect of surrendering any claim by the United
12 States against any timber purchaser that arose under a
13 timber sale contract, including a qualifying contract, before
14 the date on which the Secretary adjusts the contract term
15 under subsection (b).

16 **SEC. 614. EXTENSION AND FLEXIBILITY FOR CERTAIN AL-**
17 **LOCATED SURFACE TRANSPORTATION PRO-**
18 **GRAMS.**

19 (a) *MODIFICATION OF ALLOCATION RULES.*—Section
20 411(d) of the Surface Transportation Extension Act of 2010
21 (Public Law 111–147; 124 Stat. 80) is amended—

22 (1) in paragraph (1)—

23 (A) in the matter preceding subparagraph

24 (A)—

25 (i) by striking “1301, 1302,”; and

1 (ii) by striking “1198, 1204,”; and

2 (B) in subparagraph (A)—

3 (i) in the matter preceding clause (i)
4 by striking “apportioned under sections
5 104(b) and 144 of title 23, United States
6 Code,” and inserting “specified in section
7 105(a)(2) of title 23, United States Code
8 (except the high priority projects pro-
9 gram),”; and

10 (ii) in clause (ii) by striking “appor-
11 tioned under such sections of such Code”
12 and inserting “specified in such section
13 105(a)(2) (except the high priority projects
14 program)”;

15 (2) in paragraph (2)—

16 (A) in the matter preceding subparagraph
17 (A)—

18 (i) by striking “1301, 1302,”; and

19 (ii) by striking “1198, 1204,”; and

20 (B) in subparagraph (A)—

21 (i) in the matter preceding clause (i)
22 by striking “apportioned under sections
23 104(b) and 144 of title 23, United States
24 Code,” and inserting “specified in section
25 105(a)(2) of title 23, United States Code

1 *(except the high priority projects pro-*
2 *gram),”;* and

3 *(ii) in clause (ii) by striking “appor-*
4 *tioned under such sections of such Code”*
5 *and inserting “specified in such section*
6 *105(a)(2) (except the high priority projects*
7 *program)”;* and

8 *(3) by adding at the end the following:*

9 *“(5) PROJECTS OF NATIONAL AND REGIONAL SIG-*
10 *NIFICANCE AND NATIONAL CORRIDOR INFRASTRUC-*
11 *TURE IMPROVEMENT PROGRAMS.—*

12 *“(A) REDISTRIBUTION AMONG STATES.—*
13 *Notwithstanding sections 1301(m) and 1302(e) of*
14 *SAFETEA-LU (119 Stat. 1202 and 1205), the*
15 *Secretary shall apportion funds authorized to be*
16 *appropriated under subsection (b) for the*
17 *projects of national and regional significance*
18 *program and the national corridor infrastruc-*
19 *ture improvement program among all States*
20 *such that each State’s share of the funds so ap-*
21 *portioned is equal to the State’s share for fiscal*
22 *year 2009 of funds apportioned or allocated for*
23 *the programs specified in section 105(a)(2) of*
24 *title 23, United States Code.*

1 “(B) *DISTRIBUTION AMONG PROGRAMS.*—
2 *Funds apportioned to a State pursuant to sub-*
3 *paragraph (A) shall be—*

4 “(i) *made available to the State for the*
5 *programs specified in section 105(a)(2) of*
6 *title 23, United States Code (except the high*
7 *priority projects program), and in the same*
8 *proportion for each such program that—*

9 “(I) *the amount apportioned to*
10 *the State for that program for fiscal*
11 *year 2009; bears to*

12 “(II) *the amount apportioned to*
13 *the State for fiscal year 2009 for all*
14 *such programs; and*

15 “(ii) *administered in the same manner*
16 *and with the same period of availability as*
17 *funding is administered under programs*
18 *identified in clause (i).”.*

19 (b) *EXPENDITURE AUTHORITY FROM HIGHWAY TRUST*
20 *FUND.*—*Paragraph (1) of section 9503(c) of the Internal*
21 *Revenue Code of 1986 is amended by striking “Surface*
22 *Transportation Extension Act of 2010” and inserting*
23 *“American Jobs and Closing Tax Loopholes Act of 2010”.*

24 (c) *EFFECTIVE DATE.*—*The amendments made by this*
25 *section shall take effect upon the date of enactment of the*

1 *Surface Transportation Extension Act of 2010 (Public Law*
2 *111–147; 124 Stat. 78 et seq.) and shall be treated as being*
3 *included in that Act at the time of the enactment of that*
4 *Act.*

5 (d) SAVINGS CLAUSE.—

6 (1) IN GENERAL.—*For fiscal year 2010 and for*
7 *the period beginning on October 1, 2010, and ending*
8 *on December 31, 2010, the amount of funds appor-*
9 *tioned to each State under section 411(d) of the Sur-*
10 *face Transportation Extension Act of 2010 (Public*
11 *Law 111–147) that is determined by the amount that*
12 *the State received or was authorized to receive for fis-*
13 *cal year 2009 to carry out the projects of national*
14 *and regional significance program and national cor-*
15 *ridor infrastructure improvement program shall be*
16 *the greater of—*

17 (A) *the amount that the State was author-*
18 *ized to receive under section 411(d) of the Sur-*
19 *face Transportation Extension Act of 2010 with*
20 *respect to each such program according to the*
21 *provisions of that Act, as in effect on the day be-*
22 *fore the date of enactment of this Act; or*

23 (B) *the amount that the State is authorized*
24 *to receive under section 411(d) of the Surface*
25 *Transportation Extension Act of 2010 with re-*

1 *spect to each such program pursuant to the pro-*
2 *visions of that Act, as amended by the amend-*
3 *ments made by this section.*

4 (2) *OBLIGATION AUTHORITY.—For fiscal year*
5 *2010, the amount of obligation authority distributed*
6 *to each State shall be the greater of—*

7 *(A) the amount that the State was author-*
8 *ized to receive pursuant to section 120(a)(4)(A)*
9 *(as it pertains to the Appalachian Development*
10 *Highway System program) of title I of division*
11 *A of the Consolidated Appropriations Act, 2010*
12 *(Public Law 111–117) and sections 120(a)(4)(B)*
13 *and 120(a)(6) of such title, as of the day before*
14 *the date of enactment of this Act; or*

15 *(B) the amount that the State is authorized*
16 *to receive pursuant to section 120(a)(4)(A) (as it*
17 *pertains to the Appalachian Development High-*
18 *way System program) of title I of division A of*
19 *the Consolidated Appropriations Act, 2010 (Pub-*
20 *lic Law 111–117) and sections 120(a)(4)(B) and*
21 *120(a)(6) of such title, as of the date of enact-*
22 *ment of this Act.*

23 (3) *AUTHORIZATION OF APPROPRIATIONS.—*
24 *There is authorized to be appropriated out of the*
25 *Highway Trust Fund (other than the Mass Transit*

1 *Account) such sums as may be necessary to carry out*
2 *this subsection.*

3 (4) *INCREASE IN OBLIGATION LIMITATION.—The*
4 *limitation under the heading “Federal-aid Highways*
5 *(Limitation on Obligations) (Highway Trust Fund)”*
6 *in Public Law 111–117 is increased by such sums as*
7 *may be necessary to carry out this subsection.*

8 (5) *CONTRACT AUTHORITY.—Funds made avail-*
9 *able to carry out this subsection shall be available for*
10 *obligation and administered in the same manner as*
11 *if such funds were apportioned under chapter 1 of*
12 *title 23, United States Code.*

13 (6) *AMOUNTS.—The dollar amount specified in*
14 *section 105(d)(1) of title 23, United States Code, the*
15 *dollar amount specified in section 120(a)(4)(B) of*
16 *title I of division A of the Consolidated Appropria-*
17 *tions Act, 2010 (Public Law 111–117), and the dollar*
18 *amount specified in section 120(b)(10) of such title*
19 *shall each be increased as necessary to carry out this*
20 *subsection.*

21 **SEC. 615. COMMUNITY COLLEGE AND CAREER TRAINING**
22 **GRANT PROGRAM.**

23 (a) *IN GENERAL.—Section 278(a) of the Trade Act of*
24 *1974 (19 U.S.C. 2372(a)) is amended by adding at the end*
25 *the following:*

1 “(3) *RULE OF CONSTRUCTION.*—For purposes of
2 this section, any reference to ‘workers’, ‘workers eligi-
3 ble for training under section 236’, or any other ref-
4 erence to workers under this section shall be deemed
5 to include individuals who are, or are likely to be-
6 come, eligible for unemployment compensation as de-
7 fined in section 85(b) of the Internal Revenue Code of
8 1986, or who remain unemployed after exhausting all
9 rights to such compensation.”.

10 (b) *DEFINITION OF ELIGIBLE INSTITUTION.*—Section
11 278(b)(1) of the Trade Act of 1974 (19 U.S.C. 2372(b)(1))
12 is amended—

13 (1) by striking “section 102” and inserting “sec-
14 tion 101(a)”; and

15 (2) by striking “1002” and inserting “1001(a)”.

16 (c) *AUTHORIZATION OF APPROPRIATIONS.*—Section
17 279 of the Trade Act of 1974 (19 U.S.C. 2372a) is amend-
18 ed—

19 (1) in subsection (a), by striking the last sen-
20 tence; and

21 (2) by adding at the end the following:

22 “(c) *ADMINISTRATIVE AND RELATED COSTS.*—The
23 Secretary may retain not more than 5 percent of the funds
24 appropriated under subsection (b) for each fiscal year to
25 administer, evaluate, and establish reporting systems for the

1 *Community College and Career Training Grant program*
2 *under section 278.*

3 “(d) *SUPPLEMENT NOT SUPPLANT.*—*Funds appro-*
4 *priated under subsection (b) shall be used to supplement*
5 *and not supplant other Federal, State, and local public*
6 *funds expended to support community college and career*
7 *training programs.*

8 “(e) *AVAILABILITY.*—*Funds appropriated under sub-*
9 *section (b) shall remain available for the fiscal year for*
10 *which the funds are appropriated and the subsequent fiscal*
11 *year.*”.

12 **SEC. 616. EXTENSIONS OF DUTY SUSPENSIONS ON COTTON**
13 **SHIRTING FABRICS AND RELATED PROVI-**
14 **SIONS.**

15 (a) *EXTENSIONS.*—*Each of the following headings of*
16 *the Harmonized Tariff Schedule of the United States is*
17 *amended by striking the date in the effective date column*
18 *and inserting “12/31/2013”:*

19 (1) *Heading 9902.52.08 (relating to woven fab-*
20 *rics of cotton).*

21 (2) *Heading 9902.52.09 (relating to woven fab-*
22 *rics of cotton).*

23 (3) *Heading 9902.52.10 (relating to woven fab-*
24 *rics of cotton).*

1 (4) *Heading 9902.52.11 (relating to woven fab-*
2 *rics of cotton).*

3 (5) *Heading 9902.52.12 (relating to woven fab-*
4 *rics of cotton).*

5 (6) *Heading 9902.52.13 (relating to woven fab-*
6 *rics of cotton).*

7 (7) *Heading 9902.52.14 (relating to woven fab-*
8 *rics of cotton).*

9 (8) *Heading 9902.52.15 (relating to woven fab-*
10 *rics of cotton).*

11 (9) *Heading 9902.52.16 (relating to woven fab-*
12 *rics of cotton).*

13 (10) *Heading 9902.52.17 (relating to woven fab-*
14 *rics of cotton).*

15 (11) *Heading 9902.52.18 (relating to woven fab-*
16 *rics of cotton).*

17 (12) *Heading 9902.52.19 (relating to woven fab-*
18 *rics of cotton).*

19 (13) *Heading 9902.52.20 (relating to woven fab-*
20 *rics of cotton).*

21 (14) *Heading 9902.52.21 (relating to woven fab-*
22 *rics of cotton).*

23 (15) *Heading 9902.52.22 (relating to woven fab-*
24 *rics of cotton).*

1 (16) *Heading 9902.52.23 (relating to woven fab-*
2 *rics of cotton).*

3 (17) *Heading 9902.52.24 (relating to woven fab-*
4 *rics of cotton).*

5 (18) *Heading 9902.52.25 (relating to woven fab-*
6 *rics of cotton).*

7 (19) *Heading 9902.52.26 (relating to woven fab-*
8 *rics of cotton).*

9 (20) *Heading 9902.52.27 (relating to woven fab-*
10 *rics of cotton).*

11 (21) *Heading 9902.52.28 (relating to woven fab-*
12 *rics of cotton).*

13 (22) *Heading 9902.52.29 (relating to woven fab-*
14 *rics of cotton).*

15 (23) *Heading 9902.52.30 (relating to woven fab-*
16 *rics of cotton).*

17 (24) *Heading 9902.52.31 (relating to woven fab-*
18 *rics of cotton).*

19 **(b) EXTENSION OF DUTY REFUNDS AND PIMA COTTON**
20 **TRUST FUND; MODIFICATION OF AFFIDAVIT REQUIRE-**
21 **MENTS.**—*Section 407 of title IV of division C of the Tax*
22 *Relief and Health Care Act of 2006 (Public Law 109–432;*
23 *120 Stat. 3060) is amended—*

24 (1) *in subsection (b)—*

1 (A) in paragraph (1), by striking “amounts
2 determined by the Secretary” and all that fol-
3 lows through “5208.59.80” and inserting
4 “amounts received in the general fund that are
5 attributable to duties received since January 1,
6 2004, on articles classified under heading 5208”;
7 and

8 (B) in paragraph (2), by striking “October
9 1, 2008” and inserting “December 31, 2013”;
10 (2) in subsection (d)—

11 (A) in the matter preceding paragraph (1),
12 by inserting “annually” after “provided”; and

13 (B) in paragraph (1), by inserting “during
14 the year in which the affidavit is filed and” after
15 “imported cotton fabric”; and

16 (3) in subsection (f)—

17 (A) in the matter preceding paragraph (1),
18 by inserting “annually” after “provided”; and

19 (B) in paragraph (1), by inserting “during
20 the year in which the affidavit is filed and” after
21 “United States”.

22 (c) *EFFECTIVE DATE.*—The amendments made by this
23 section shall take effect on the date of the enactment of this
24 Act and apply with respect to affidavits filed on or after
25 such date of enactment.

1 **SEC. 617. MODIFICATION OF WOOL APPAREL MANUFACTUR-**
2 **ERS TRUST FUND.**

3 (a) *IN GENERAL.*—Section 4002(c)(2)(A) of the *Mis-*
4 *cellaneous Trade and Technical Corrections Act of 2004*
5 *(Public Law 108–429; 118 Stat. 2600)* is amended by strik-
6 ing “chapter 51” and inserting “chapter 62”.

7 (b) *FULL RESTORATION OF PAYMENT LEVELS IN FIS-*
8 *CAL YEAR 2010.*—

9 (1) *TRANSFER OF AMOUNTS.*—

10 (A) *IN GENERAL.*—Not later than 30 days
11 after the date of the enactment of this Act, the
12 Secretary of the Treasury shall transfer to the
13 Wool Apparel Manufacturers Trust Fund, out of
14 the general fund of the Treasury of the United
15 States, amounts determined by the Secretary of
16 the Treasury to be equivalent to amounts re-
17 ceived in the general fund that are attributable
18 to the duty received on articles classified under
19 chapter 62 of the Harmonized Tariff Schedule of
20 the United States, subject to the limitation in
21 subparagraph (B).

22 (B) *LIMITATION.*—The Secretary of the
23 Treasury shall not transfer more than the
24 amount determined by the Secretary to be nec-
25 essary for—

1 (i) *U.S. Customs and Border Protec-*
2 *tion to make payments to eligible manufac-*
3 *turers under section 4002(c)(3) of the Mis-*
4 *cellaneous Trade and Technical Corrections*
5 *Act of 2004 so that the amount of such pay-*
6 *ments, when added to any other payments*
7 *made to eligible manufacturers under sec-*
8 *tion 4002(c)(3) of such Act for calendar*
9 *year 2010, equal the total amount of pay-*
10 *ments authorized to be provided to eligible*
11 *manufacturers under section 4002(c)(3) of*
12 *such Act for calendar year 2010; and*

13 (ii) *the Secretary of Commerce to pro-*
14 *vide grants to eligible manufacturers under*
15 *section 4002(c)(6) of the Miscellaneous*
16 *Trade and Technical Corrections Act of*
17 *2004 so that the amounts of such grants,*
18 *when added to any other grants made to eli-*
19 *gible manufacturers under section*
20 *4002(c)(6) of such Act for calendar year*
21 *2010, equal the total amount of grants au-*
22 *thorized to be provided to eligible manufac-*
23 *turers under section 4002(c)(6) of such Act*
24 *for calendar year 2010.*

1 (2) *PAYMENT OF AMOUNTS.*—*U.S. Customs and*
2 *Border Protection shall make payments described in*
3 *paragraph (1) to eligible manufacturers not later*
4 *than 30 days after such transfer of amounts from the*
5 *general fund of the Treasury of the United States to*
6 *the Wool Apparel Manufacturers Trust Fund. The*
7 *Secretary of Commerce shall promptly provide grants*
8 *described in paragraph (1) to eligible manufacturers*
9 *after such transfer of amounts from the general fund*
10 *of the Treasury of the United States to the Wool Ap-*
11 *parel Manufacturers Trust Fund.*

12 (c) *RULE OF CONSTRUCTION.*—*The amendment made*
13 *by subsection (a) shall not be construed to affect the avail-*
14 *ability of amounts transferred to the Wool Apparel Manu-*
15 *facturers Trust Fund before the date of the enactment of*
16 *this Act.*

17 **SEC. 618. DEPARTMENT OF COMMERCE STUDY.**

18 *Not later than 180 days after the date of enactment*
19 *of this Act, the Secretary of Commerce shall report to Con-*
20 *gress detailing—*

21 (1) *the pattern of job loss in the New England,*
22 *Mid-Atlantic, and Midwest States over the past 20*
23 *years;*

24 (2) *the role of the off-shoring of manufacturing*
25 *jobs in overall job loss in the regions; and*

1 (3) *recommendations to attract industries and*
2 *bring jobs to the region.*

3 **SEC. 619. ARRA PLANNING AND REPORTING.**

4 *Section 1512 of the American Recovery and Reinvest-*
5 *ment Act of 2009 (Public Law 111-5; 123 Stat. 287) is*
6 *amended—*

7 (1) *in subsection (d)—*

8 (A) *in the subsection heading, by inserting*
9 “*PLANS AND*” *after “AGENCY”;*

10 (B) *by striking “Not later than” and insert-*
11 *ing the following:*

12 “(1) *DEFINITION.—In this subsection, the term*
13 ‘*covered program*’ *means a program for which funds*
14 *are appropriated under this division—*

15 “(A) *in an amount that is—*

16 “(i) *more than \$2,000,000,000; and*

17 “(ii) *more than 150 percent of the*
18 *funds appropriated for the program for fis-*
19 *cal year 2008; or*

20 “(B) *that did not exist before the date of en-*
21 *actment of this Act.*

22 “(2) *PLANS.—Not later than July 1, 2010, the*
23 *head of each agency that distributes recovery funds*
24 *shall submit to Congress and make available on the*

1 *website of the agency a plan for each covered pro-*
2 *gram, which shall, at a minimum, contain—*

3 *“(A) a description of the goals for the cov-*
4 *ered program using recovery funds;*

5 *“(B) a discussion of how the goals described*
6 *in subparagraph (A) relate to the goals for ongo-*
7 *ing activities of the covered program, if applica-*
8 *ble;*

9 *“(C) a description of the activities that the*
10 *agency will undertake to achieve the goals de-*
11 *scribed in subparagraph (A);*

12 *“(D) a description of the total recovery*
13 *funding for the covered program and the recov-*
14 *ery funding for each activity under the covered*
15 *program, including identifying whether the ac-*
16 *tivity will be carried out using grants, contracts,*
17 *or other types of funding mechanisms;*

18 *“(E) a schedule of milestones for major*
19 *phases of the activities under the covered pro-*
20 *gram, with planned delivery dates;*

21 *“(F) performance measures the agency will*
22 *use to track the progress of each of the activities*
23 *under the covered program in meeting the goals*
24 *described in subparagraph (A), including per-*
25 *formance targets, the frequency of measurement,*

1 *and a description of the methodology for each*
2 *measure;*

3 “(G) *a description of the process of the*
4 *agency for the periodic review of the progress of*
5 *the covered program towards meeting the goals*
6 *described in subparagraph (A); and*

7 “(H) *a description of how the agency will*
8 *hold program managers accountable for achiev-*
9 *ing the goals described in subparagraph (A).*

10 “(3) *REPORTS.—*

11 “(A) *IN GENERAL.—Not later than*”;
12 *and*
13 “(C) *by adding at the end the following:*

14 “(B) *REPORTS ON PLANS.—Not later than*
15 *30 days after the end of the calendar quarter*
16 *ending September 30, 2010, and every calendar*
17 *quarter thereafter during which the agency obli-*
18 *gates or expends recovery funds, the head of each*
19 *agency that developed a plan for a covered pro-*
20 *gram under paragraph (2) shall submit to Con-*
21 *gress and make available on a website of the*
22 *agency a report for each covered program that—*

23 “(i) *discusses the progress of the agency*
 in implementing the plan;

1 “(ii) describes the progress towards
2 achieving the goals described in paragraph
3 (2)(A) for the covered program;

4 “(iii) discusses the status of each activ-
5 ity carried out under the covered program,
6 including whether the activity is completed;

7 “(iv) details the unobligated and unex-
8 pired balances and total obligations and
9 outlays under the covered program;

10 “(v) discusses—

11 “(I) whether the covered program
12 has met the milestones for the covered
13 program described in paragraph
14 (2)(E);

15 “(II) if the covered program has
16 failed to meet the milestones, the rea-
17 sons why; and

18 “(III) any changes in the mile-
19 stones for the covered program, includ-
20 ing the reasons for the change;

21 “(vi) discusses the performance of the
22 covered program, including—

23 “(I) whether the covered program
24 has met the performance measures for

1 *the covered program described in para-*
2 *graph (2)(F);*

3 *“(II) if the covered program has*
4 *failed to meet the performance meas-*
5 *ures, the reasons why; and*

6 *“(III) any trends in information*
7 *relating to the performance of the cov-*
8 *ered program; and*

9 *“(vii) evaluates the ability of the cov-*
10 *ered program to meet the goals of the cov-*
11 *ered program given the performance of the*
12 *covered program.”;*

13 *(2) in subsection (f)—*

14 *(A) by striking “Within 180 days” and in-*
15 *serting the following:*

16 *“(1) IN GENERAL.—Within 180 days”; and*

17 *(B) by adding at the end the following:*

18 *“(2) PENALTIES.—*

19 *“(A) IN GENERAL.—Subject to subpara-*
20 *graphs (B), (C), and (D), the Attorney General*
21 *may bring a civil action in an appropriate*
22 *United States district court against a recipient*
23 *of recovery funds from an agency that does not*
24 *provide the information required under sub-*
25 *section (c) or knowingly provides information*

1 *under subsection (c) that contains a material*
2 *omission or misstatement. In a civil action*
3 *under this paragraph, the court may impose a*
4 *civil penalty on a recipient of recovery funds in*
5 *an amount not more than \$250,000. Any*
6 *amounts received from a civil penalty under this*
7 *paragraph shall be deposited in the general fund*
8 *of the Treasury.*

9 “(B) NOTIFICATION.—

10 “(i) IN GENERAL.—*The head of an*
11 *agency shall provide a written notification*
12 *to a recipient of recovery funds from the*
13 *agency that fails to provide the information*
14 *required under subsection (c). A notification*
15 *under this subparagraph shall provide the*
16 *recipient with information on how to com-*
17 *ply with the necessary reporting require-*
18 *ments and notice of the penalties for failing*
19 *to do so.*

20 “(ii) LIMITATION.—*A court may not*
21 *impose a civil penalty under subparagraph*
22 *(A) relating to the failure to provide infor-*
23 *mation required under subsection (c) if, not*
24 *later than 31 days after the date of the noti-*

1 *fication under clause (i), the recipient of the*
2 *recovery funds provides the information.*

3 *“(C) CONSIDERATIONS.—In determining the*
4 *amount of a penalty under this paragraph for a*
5 *recipient of recovery funds, a court shall con-*
6 *sider—*

7 *“(i) the number of times the recipient*
8 *has failed to provide the information re-*
9 *quired under subsection (c);*

10 *“(ii) the amount of recovery funds pro-*
11 *vided to the recipient;*

12 *“(iii) whether the recipient is a gov-*
13 *ernment, nonprofit entity, or educational*
14 *institution; and*

15 *“(iv) whether the recipient is a small*
16 *business concern (as defined under section 3*
17 *of the Small Business Act (15 U.S.C. 632)),*
18 *with particular consideration given to busi-*
19 *nesses with not more than 50 employees.*

20 *“(D) APPLICABILITY.—This paragraph*
21 *shall apply to any report required to be sub-*
22 *mitted on or after the date of enactment of this*
23 *paragraph.*

24 *“(E) NONEXCLUSIVITY.—The imposition of*
25 *a civil penalty under this subsection shall not*

1 *preclude any other criminal, civil, or adminis-*
2 *trative remedy available to the United States or*
3 *any other person under Federal or State law.*

4 “(3) *TECHNICAL ASSISTANCE.*—*Each agency dis-*
5 *tributing recovery funds shall provide technical assist-*
6 *ance, as necessary, to assist recipients of recovery*
7 *funds in complying with the requirements to provide*
8 *information under subsection (c), which shall include*
9 *providing recipients with a reminder regarding each*
10 *reporting requirement.*

11 “(4) *PUBLIC LISTING.*—

12 “(A) *IN GENERAL.*—*Not later than 45 days*
13 *after the end of each calendar quarter, and sub-*
14 *ject to the notification requirements under para-*
15 *graph (2)(B), the Board shall make available on*
16 *the website established under section 1526 a list*
17 *of all recipients of recovery funds that did not*
18 *provide the information required under sub-*
19 *section (c) for the calendar quarter.*

20 “(B) *CONTENTS.*—*A list made available*
21 *under subparagraph (A) shall, for each recipient*
22 *of recovery funds on the list, include the name*
23 *and address of the recipient, the identification*
24 *number for the award, the amount of recovery*
25 *funds awarded to the recipient, a description of*

1 *the activity for which the recovery funds were*
2 *provided, and, to the extent known by the Board,*
3 *the reason for noncompliance.*

4 “(5) *REGULATIONS AND REPORTING.*—

5 “(A) *REGULATIONS.*—*Not later than 90*
6 *days after the date of enactment of this para-*
7 *graph, the Attorney General, in consultation*
8 *with the Director of the Office of Management*
9 *and Budget and the Chairperson, shall promul-*
10 *gate regulations regarding implementation of*
11 *this section.*

12 “(B) *REPORTING.*—

13 “(i) *IN GENERAL.*—*Not later than July*
14 *1, 2010, and every 3 months thereafter, the*
15 *Director of the Office of Management and*
16 *Budget, in consultation with the Chair-*
17 *person, shall submit to Congress a report on*
18 *the extent of noncompliance by recipients of*
19 *recovery funds with the reporting require-*
20 *ments under this section.*

21 “(ii) *CONTENTS.*—*Each report sub-*
22 *mitted under clause (i) shall include—*

23 “(I) *information, for the quarter*
24 *and in total, regarding the number*
25 *and amount of civil penalties imposed*

1 *and collected under this subsection,*
2 *sorted by agency and program;*

3 “(II) *information on the steps*
4 *taken by the Federal Government to re-*
5 *duce the level of noncompliance; and*

6 “(III) *any other information de-*
7 *termined appropriate by the Direc-*
8 *tor.”; and*

9 (3) *by adding at the end the following:*

10 “(i) *TERMINATION.—The reporting requirements*
11 *under this section shall terminate on September 30, 2013.”.*

12 ***TITLE VII—BUDGETARY***
13 ***PROVISIONS***

14 ***SEC. 701. BUDGETARY PROVISIONS.***

15 (a) *STATUTORY PAYGO.—The budgetary effects of this*
16 *Act, for the purpose of complying with the Statutory Pay-*
17 *As-You-Go Act of 2010, shall be determined by reference to*
18 *the latest statement titled ‘Budgetary Effects of PAYGO*
19 *Legislation’ for this Act, jointly submitted for printing in*
20 *the Congressional Record by the Chairmen of the House and*
21 *Senate Budget Committees, provided that such statement*
22 *has been submitted prior to the vote on passage in the House*
23 *acting first on this conference report or amendment between*
24 *the Houses.*

1 (b) *EMERGENCY DESIGNATIONS.*—Sections 501, 511,
2 and 516—

3 (1) are designated as an emergency requirement
4 pursuant to section 4(g) of the Statutory Pay-As-You-
5 Go Act of 2010 (Public Law 111–139; 2 U.S.C.
6 933(g));

7 (2) in the House of Representatives, are des-
8 ignated as an emergency for purposes of pay-as-you-
9 go principles; and

10 (3) in the Senate, are designated as an emer-
11 gency requirement pursuant to section 403(a) of S.
12 Con. Res. 13 (111th Congress), the concurrent resolu-
13 tion on the budget for fiscal year 2010.

Attest:

Clerk.

11TH CONGRESS
2^D SESSION

H.R. 4213

**HOUSE AMENDMENT TO
SENATE AMENDMENT**